Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No. _____

In The

Supreme Court of the United States

October Term, 1995

JACK DAVID KELLY, Individually, as the Original Sole Owner of MAPLE LEAF DEVELOPMENT CORPORATION and as the President/Chairman and Shareholder of MAPLE LEAF DEVELOPMENT CORPORATION, "PRO SE",

Petitioner,

versus

TREE FARM DEVELOPMENT CORPORATION; EMORY O. WILLIAMS, JR.; THE ESTATE OF GEORGE G. PHILLIPS, JR.; E. D. BOB PIERCE; and THE ESTATE OF ABRAHAM L. PIERCE,

Respondents.

Petition For Writ Of Certiorari To The Supreme Court Of Florida

PETITION FOR WRIT OF CERTIORARI

JACK DAVID KELLY, Pro Se
3331 Summit Blvd., #87
Pensacola, FL 32503
(904) 438-4785
Petitioner, Pro Se

QUESTIONS PRESENTED FOR REVIEW

Whether the actions of the Florida courts violated and deprived Jack David Kelly, individually, as the original sole owner, the president/chairman and shareholder of Maple Leaf Development Corporation, their rights under the United States Constitution, State Constitution and Florida Statutes?

Did the lower courts of Florida violate the above petitioner's rights by improperly allowing the issue of title to property to be considered or that it even existed when the first filed case and it's action of declaratory judgment with accounting and specific performance to set aside a proposed merger agreement contract?

Based on the questions above were the following rules recognized and carried out in insuring the rights of the petitioner?

1.) Article III.2.1 - Principle 169

2.) Article III.2.1 - Principle 170

3.) Rule 14-1.(h)

4.) Principle 254 from the Fourteenth Amendment.

5.) Florida Constitution, Article 1, Section 9 - "No person shall be deprived of life, liberty or property without due process of law..."

6.) Article 1, Section 21 - "The courts shall be open to every person for redress of any injury and justice shall be administrated without sale, denial or delay"

7.) Article 1, Section 22 - "The right of trial by jury shall be secure to all and remain inviolate."

NOTATION AS REQUIRED BY RULE 29.6

There is no parent or subsidiary company to be listed.

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JURISDICTION

The date of the judgment or order sought to be reviewed was entered September 6, 1995.

Pursuant to 28 U.S.C. and Rule 10.1 - The Supreme Court of the United States has discretionary power to review final orders of a states' highest court of last resort.

Market Street R. Co. v. Railroad Commission, 324 U.S. 548, 551 (1945).

This court has held that to be reviewable, the state court judgment "must be final", it must be the final word of the final court.

This petition for Writ of Certiorari is timely filed and therefore this court does have jurisdiction pursuant to Rule 13 of the Rules of the United States Supreme Court.

Pursuant to 18 U.S.C. § 1001 provides:

"Whoever in any manner within this jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

Article 1, Section 9, "No person shall deprived of life, liberty or property without due process of law."

Article 1, Section 21 - "The courts shall be open to every person for redress of any injury and justice shall be administrated without sale, denial or delay."

Article 1, Section 22 - "The right of trial by jury shall be secure to all and remain inviolate."

The state court of last resort has decided important federal questions in a way that conflicts with the decision of other state courts of last resort and of the United States Courts of Appeal.

Thereby satisfying the applicable statutory and regulatory requirements of Rule 10 of the Supreme Court of the United States that demands that this honorable court exercise it's supervisory power for redress the improper treatment of this case in the Florida

courts.

Due process of law is another descriptive name for proper legal, judicial and governmental fair play in dealing with their people. The lower court's decision in fact denies the petitioner's their constitutional rights of due process of law. Thereby denying all civil and constitutional rights of the appellant, plaintiff Jack David Kelly, individually, as the original Sole Owner of Maple Leaf Development Corporation, the president/chairman and shareholder of Maple Leaf Development Corporation.

Rule 28. Oral Argument - Rules of the Supreme Court of the United States

Rule 27. Calendar - Rules of the Supreme Court of the United States

Rule 27. Calendar 3 - Rules of the Supreme Court of the United States

Other material facts the petitioner believes essential to understanding the petition, particular Points of Constitutional, State Law and Facts. Constitutional Tort Federal and State Statute provides that every person who under color of any statute, ordnance, regulation, custom or usage of any state or territory, subjects or causes to be subjected, any citizen of the United States or any other person thereof to the deprivation of any rights, privileges or immunities secured by the constitution's provisions and state laws, shall be liable to the party injured in an action at a lawsuit in equity or other proper proceeding for redress.

42 U.S.C.A. § 1983

§ 57.105 (1) Florida Statute, an attorney is personally responsible for his conduct unless he in good faith based upon representation of the client.

1.) The violation of obligation by which damages accrues.

2.) Violation based on breech of the implied and written covenant of good faith and fair dealing.

3.) Breech of contract, breech of trust and fair dealing.

K-Mart Corp. v. Pancock, 103 NEV. 39, 732 p.2d 1364, 1368.

The lower court returned a wrongful final summary judgment by general statements of the defendants and their attorney, by which the decision plainly shows that the lower court judge was clearly prejudicial, bias and without authority (color of law). The lower

court could have not possibly concluded factually, that the facts thereof was verified in existence. In other words, questions of this type of interrelated cases and facts is to be determined by the trier of the fact (a jury) that may decide on all the issues and the law itself not by a lower court judge in a summary judgment in violation of plaintiff's constitutional rights of a trial by jury, this fundamental right is basic to our concepts of justice, it means essentially that trials are held and cases decided by the people, not by the government, they have the power not only to decide the facts in a case but also to decide on the validity of the law itself. The most important way juries have been a bulwark against tyranny.

Citing the Zenger case of 1735.

It is the best cause. It is the cause of liberty. It may in its consequence affect every free man. The jury has the right to judge both the law as will as the fact in controversy.

Citing Pete Mitchell and Company vs. Lane, 565 SO. 2d 1322, Florida, the last element to occur is damages, and it does not occur until the completion of the litigation of the cause of action. In other words, the statute of limitation does not begin to run until that specific case and cause of action is litigated to a conclusion. Therefore the lower court judges, judgment was without a doubt prejudicial, bias and without authority (color of law).

Citing Erskine vs. Upland, 56 JL. App. 2d, 132 p 2d. 218, 228, the lower courts decisions may be grounds for a new trial and reversal of judgment.

Additional grounds for jurisdiction is that it is necessary to ensure decisional harmony within the courts and for that reason (grounds), it is of exceptional importance and that such consideration by petition for Writ of Certiorari is necessary to maintain uniformity in the court's decisions and that intra-district conflicts of decisions exist proven by all the hereto cited cases above and this instant case's final judgment by the lower courts that is certainly not in harmony of any of the authorities cited in the table of authority and plainly and clearly supports the argument hereof.

Citing Rule 9.331 (c)(1) - Determination of causes in a district court of appeal en banc.

<u>As Further Substantial Grounds, and Additional Facts</u> that necessitates the Writ of Certiorari and demands that the Supreme

Court of the United State exercise it's supervisory powers concerning the continuing fraud, concealment and misrepresentation.

The original order entered by the Leon County, Florida Circuit Court Judge that is before this court was entered after a brief hearing, the complaint sought a declaratory judgment determination of the statutes of a proposed merger document improperly on file with the Secretary of State, Tallahassee, Leon County, Florida.

Ther merger document purported to create or effectuation a merger between Maple Leaf Development Corporation and Tree Farm Development Corporation. A complaint was filed seeking declaratory relief to set aside the purported merger, a demand was inserted concerning rights to real estate. Count II was inserted contrary to instructions, this issue concerning real estate was to have been determined subsequent, if needed in a second action to the setting aside of the purported merger.

Pursuant to Rule 27. Calendar - Rules of the Supreme court of the United States.

Two or more cases involving the same or related questions be argued together as one case or on such other terms as the court may prescribe.

1.) Rehooker's Estate, 173 Misc. 515, 18 N.Y. 8. s 2d 107, 110. - a plain error rule.

For clarification of the facts and law that had to be performed under the laws of the state of Florida for the proposed merger between Maple Leaf Development Corporation and Tree Farm Development Corporation to be effective have wholly failed according to the terms of the proposed merger agreement contract and none of the time, conditions or covenants were met of relevance intertwined controlling requirements of ultimate facts of case no. 79-1862-CA-01, Division "E", Pensacola Loan & Savings Bank, now known as the Horizon Bank of Pensacola, v. Emory O. Williams, Jr., Abe Pierce, E. D. Pierce, George Phillips, Jr., and Tree Farm Development Corporation, a foreign corporation et., UX ET, extending, accruing to September 14, 1990 and on even unto this date.

All the principles in this case Emory O. Williams, Jr., Abe Pierce, E. D. Pierce, George G. Phillips, Jr., and Tree Farm

Development Corporation, a foreign corporation, had the responsibility of performance of the proposed merger agreement contracts time, conditions and covenants of intertwined requirements of case no. 79-1862-CA-01, Division "E", by the requirements of the Florida Corporation Act that had to be performed by those identified for the proposed merger to be effective.

Said case has been in the process of maturing into right of a matured cause of action, accruing in relevance, controlling ultimate facts to the proposed merger agreement contracts between Jack David Kelly, individually, as the original sole owner of Maple Leaf Development Corporation and as president/chairman and shareholder of Maple Leaf Development Corporation by identified for the proposed ownership of share of Maple Leaf Development Corporation and for the proposed merger agreement contracts to be effective, the terms of the proposed merger agreement contracts have wholly failed and none of the time, conditions or covenant were met. Therefore it is plain and clear that statutes of limitations could not possibly begun to run during this accruing period; arising by way of increase or augmentation.

Citing Globe Indemnity Co. v. Broce, CCA. OKL., 81 F .2d 143, 153.

Again, see accruing, augmentation process of the intertwined, any interrelated case no. 79-1862-CA-01, Division "E", Pensacola Loan & Savings Bank, now known as the Horizon Bank of Pensacola, US. Emory O. Williams, Jr., Abe Pierce, E. D. Pierce, George Phillips, Jr., and Tree Farm Development Corporation from 1979 until 1990.

Said case has been in care of Philip A. Bates, the self same attorney for Tree Farm Development Corporation deliberately concealing relevance, ultimate, controlling facts in this related, intertwined instant case that is hereby petitioned for a Writ of Certiorari to the Honorable Court of the United States.

These essential, controlling, intertwined documents of ultimate facts are needed for clarification.

Rehooker's Estate, 173 Misc. 515, 18 N.Y.S. S.2d 107, 110.

People Ex Rel., Hudson & M.R. Co. v. Sexton, Sup. 44, N.Y.S. 2d 884, 885.

O'Shea v. Hatch, App. 97 N.M. 409, 604 p.2nd 515, 520.

Peoples v. Braslau's Furniture Co., TEX Div. App., 493 S.W. 2d 638, 640.

If there is even a scintilla of evidence presented to support the non moving party and position, summary judgment should not be granted.

Chinlette v. Smith, ALA 374 SO. 2d 872, 873

Scintilla of Evidence Rule. A metaphorical expression to describe a very insignificant or trifling item or particle of evidence at all in a case, even a mere scintilla, tending to support a material issue, the case cannot be taken from the jury but must be left to their decision.

Citing Wilson v. Liberty Nat. Life Ins. Co., ALA 331 SO. 2d 617, 619.

Article V. - Section 3 Supreme Court

(b) Jurisdiction - The Supreme Court;

(1) Shall hear appeals from final judgments of trial courts imposing the death penalty and from decisions of district courts of appeal declaring invalid a state statute or a provision of the state constitution.

The lower court, the Supreme Court of the State of Florida, the court of last resort of the state of Florida has declared invalid the above provision of the state constitution. Therefore the Supreme Court of the United States does have jurisdiction. In support for granting the petitioner Writ of Certiorari, the opponent failed to plead ultimate facts as required by:

Rule 1.110 Florida Rules of Civil Procedure.

Ultimate facts, issuable facts; facts essential to the right of action or matter of defense.

Citing Allied Stores of Texas, In.c v. McClure, Tex. Civ. App., 595 S.W. 2d 165, 169.

Facts necessary and essential for decision by court.

People Ex Rel., Hudson & M.R.S. Co. v. Sexton, Sup. 44, N.Y.S. 2d 884, 885.

Facts which are necessary to determine issues in case, as distinguished from evident facts supporting them.

O'Shea v. Hatch, App. 97 N.M. 409, 604 p.2nd 515, 520.

Mining Securities Co. v. Wall, 99 MONT. 596, 45 p.2d 302,

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William v. Pilot Life Ins. Co. 288 H.C. 338, 218 S.E. 2d 368, 371.

One that is essential to the right of action or matter of defense and the courts is under duty of submitting only ultimate or controlling issues.

Peoples v. Braslau's Furniture Co., TEX Div. App., 493 S.W. 2d 638, 640.

Citing 28 U.S.C. § 2403(b) may apply and shall be served on the Attorney General of the State (Florida).

South Florida Water Management District v. Muroff, 450 So.2d 1258 (Fla. 4th DCA 1984); Gutterman-Musicant-Kreitzman, Inc. v. I.G. Realty Company, 426 So.2d 1216 (Fla. 4th DCA 1983). It is well settled that if a plaintiff moves for summary judgment prior to defendant's filing an answer, the movant must demonstrate conclusively and to a certainty from the record that the defendant cannot plead or otherwise raise a genuine issue of material fact.

Therefore, in this instant case, it would be impossible to determine whether the defendant's affirmative defenses might give rise to a genuine material fact. Indeed it appears possible that the defendant could have fled or otherwise raised a genuine issue of fact. Therefore the final judgment should be reversed and remained to the trial court for further proceedings.

Wherefore this honorable court's jurisdiction does exist for this honorable court to exercise its jurisdictional power and exercise its supervisory priority to grant this Writ of Certiorari.

In protection of the Constitution of the United States, the State of Florida, and true legal procedure.

CONSTITUTIONAL PROVISIONS INVOLVED:

Pursuant to 28 U.S.C. and Rule 10.1 - The Supreme Court of the United States has discretionary power to review final orders of a states' highest court of last resort.

Pursuant to 18 U.S.C. § 1001 provides:

"Whoever in any manner within this jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

Article 1, Section 9, "No person shall deprived of life, liberty or property without due process of law."

Article 1, Section 21 - "The courts shall be open to every person for redress of any injury and justice shall be administrated without sale, denial or delay."

Article 1, Section 22 - "The right of trial by jury shall be secure to all and remain inviolate."

Article III.2.1 - Principle 169

Article III.2.1 - Principle 170

Rule 14-1.(h)

Principle 254 from the Fourteenth Amendment.

Pursuant to the above, the Supreme Court has the discretionary power to review final orders of a state's highest court of last resort that has deprived an individual his rights guaranteed by the United States Constitution. The decree sought to be reviewed was entered September 6, 1995.

CONCISE STATEMENT FOR FURTHER CLARIFICATION AND EXPLANATION

The attorney for the defendants, Tree Farm Development Corporation, in this first filed case deliberately, wrongly represented to the lower Florida courts that the declaratory action filed by Jack David Kelly, individually, as the original sole owner, the president/chairman and shareholder of Maple Leaf Development corporation involved title to real estate which as it is plain to see title to property could not possibly be considered first. Therefore, the title action filed by Tree Farm Development Corporation and their attorney was improper and illegal in any proper and legal due process of law procedure. This representation to the court was wrong and it was made for the purpose of misrepresentation. The defendant counsel knew that the first action could not possible involve title, but that it had to only involve a declaratory judgment action that required accounting and specific performance in undoing the purported merger contrary to the true facts above the defendants and their counsel knowing falsely represented it was a complaint seeking resolution of title. The Leon County, Florida judge used this misrepresentation by the defendant's attorney move this first filed action from Leon County, Florida where the wrong sought to be remedied occurred.

The action by the lower court judge in transferring the plaintiff's declaratory judgment action to another jurisdiction has denied the petitioner's their constitutional rights of proper and legal due process of law, guaranteed by the United States Constitution.

The wrongful act of filing a false certificate of proposed merger took place and exists in Leon County, Florida. Petitioner's action to set aside the wrongful act was brought and filed in Leon County, State of Florida, where the wrongful and illegal act took place and exists. Petitioner's filing of this action for declaratory relief was filed in the proper court in accordance with § 47.011, Florida Statutes.

As further substantial grounds, the facts that necessitate the United States Supreme Court exercise its supervisory powers is the continuing fraud and misrepresentation that Tree Farm

Development Corporation has practiced to conceal the fact that the proposed merger was not effective is.

Tree Farm Development Corporation has filed with the State of Florida, Secretary of State a false and fraudulent document representing that W. D. Nobles, Jr. was a director of Tree Farm Development Corporation. This false representation was made for the purpose of concealing the fact that all of the issued stock of Maple Leaf Development Corporation was assigned, pledged to Pensacola Loan and Savings Bank now know as the Horizon Bank of Pensacola, Mr. Nobles was at the time of the representation owner of Pensacola Loan & Savings Bank of Pensacola. Mr. Nobles had never acted in any capacity as an officer or director of Tree Farm Development Corporation.

This deliberate misrepresentation by Tree Farm Development Corporation was additionally made to cover up by trick and scheme the true status of Maple Leaf Development Corporation, which allowed Tree Farm Development Corporation to be in a position to fraudulently acquire and falsely deal in the assets of Maple Leaf Corporation. These actions are all prohibited by Florida Statutes §§ 726.01, 726.07, 726.08, 726.09 and color of law.

Citing Color of Law. The appearance or semblance, without the substance, of legal right. Misuse of power, possessed by virtue of state law and made possible only because wrongdoer is clothed with authority of state, is action taken under "color of law." Atkins v. Lanning, D.C. Okl., 415 F.Supp. 186, 188.

When used in the context of federal civil rights statutes or criminal law, the term is synonymous with the concept of "state action" under the Fourteenth Amendment, Timson v. Weiner, D.C.Ohio, 395 F.Supp. 1344, 1347; and means pretense of law and includes actions of officers who undertake to perform their official duties. Thompson v. Baker, D.C.Ark., 133 F.Supp. 247; 42 U.S. C.A. § 1983.

Action taken by private individuals may be "under color of state law" for purposes of 42 U.S.C.A. § 1983 governing deprivation of civil rights when significant state involvement attaches to action. Wagner v. Metropolitan Nashville Airport Authority, C.A.Tenn., 772 F.2d 227, 229.

Acts "under color of any law" of a State include not only acts

done by State officials within the bounds or limits of their lawful authority, but also acts done without and beyond the bounds of their lawful authority; provided that, in order for unlawful acts of an official to be done "under color of any law", the unlawful acts must be done while such official is purporting or pretending to act in the performance of his official duties; that is to say, the unlawful acts must consist in an abuse or misuse of power which is possessed by the official only because he is an official; and the unlawful acts must be of such a nature or character, and be committed under such circumstances, that they would not have occurred but for the fact that the person committing them was an official then and there exercising his official powers outside the bounds of lawful authority, 42 U.S.C.A. § 1983.

ARGUMENTATION

The Supreme Court has no common law jurisdiction and it can only exercise the jurisdiction prescribed by the constitution. Jurisdiction does exist in this case due to the state's court of last resort violation of a citizen's constitutional rights, cited in question's presented for review, by sanctioning the lower courts denying them their constitutional rights. Citing Zenger Case of 1735.

The state court of last resort has departed from the accepted and usual course of judicial proceedings, and sanctioned such a departure by the lower court. As to call for an exercise of this honorable court's supervisory powers for this instant case for a full and fair hearing by the established process for the type of problems involved.

The preposterous reasoning by respondents and their attorney reveals their reckless disregards for the constitutional rights of the people of the United States.

Therefore the questions presented in this instant case could not be more substantially federal, as it involves the basic fundamental rights of the people of the United States of America.

Wherefore we ask this Honorable Court, the Supreme Court of the United States to exercise its supervisory powers and reverse the Final Judgment and remand to the trial court for further proceedings.

MOTION FOR ORAL ARGUMENT

Pursuant to Rule 28. Oral Argument - Rules of the Supreme Court of the United States.

To emphasize and clarify the written arguments in the briefs on the merits.

Jack David Kelly, Pro Se
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(904) 438-4785
Petitioner, Pro Se

CITATIONS OF THE OFFICIAL AND UNOFFICIAL REPORTS OF THE OPINIONS AND ORDERS ENTERED IN THE CASE

Appendix

SUPREME COURT OF FLORIDA
DATED September 6, 1995

JACK KELLY,	*	
Appellant,	*	
v.	*	CASE NO. 85,600
TREE FARM DEVELOPMENT	*	District Court of Appeal,
CORPORATION, etc.,	*	1st District - No. 94-2167
Appellee.	*	
**********	*	

Appellant's Motion for Reinstatement filed in the above cause is hereby denied.

Appellant's Motion to Strike Motion is hereby denied.

Appellee's Motion for Attorney's Fees is granted; and said attorney is hereby allowed a fee of one thousand dollars ($1,000.00) for services in this Court, said sum to be paid to said attorney by appellant after final disposition of this cause.

SHAW, KOGAN, HARDING, WELLS and ANSTEAD, JJ., concur

A True Copy

TEST:

[SEAL]

Sid J. White
Clerk, Supreme Court

TC

cc: Hon. Jon S. Wheeler, Clerk
Hon. Ernie Lee Magaha, Clerk
Hon. Joseph O. Tarbuck, Judge

Mr. Jack David Kelly
Mr. Stephen Moorhead
Mr. E. D. "Bob" Pierce
Mr. Carl R. Pennington, Jr.
Mr. Emory O. Williams
Mr. Philip A. Bates

DISTRICT COURT OF APPEAL, FIRST DISTRICT
Tallahassee, Florida 32399
Telephone No. (904) 488-6151
DATED May 12, 1995
CASE NO.: 94-2167

Jack Kelly — Tree Farm Development Corporation

v.

Appellant(s), — Appellee(s).

BY ORDER OF THE COURT:

The court's mandate in this case was entered on march 28, 1995. Therefore, as should have been apparent to counsel for appellant, Hall & Runnels, P.A., this court lacked jurisdiction to consider and rule upon the "Motion Requesting Court Approval of Withdrawal of Counsel", which was filed on April 21, 1995. For the same reason, as well as the additional reason that appellant, in proper person, has filed a "Notice of Appeal" to the supreme court, the "Motion Requesting: Reconsideration of, or Alternatively Clarification of, Orders Relating to Withdrawal of Counsel; Requesting that Copies of Pleading Be Provided to the Undersigned; and Requesting that Timeliness for further Action and Filing of Additional Pleadings in this Case be Tolled" is DENIED.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

/s/ Jon S. Wheeler
JON S.. WHEELER, CLERK [SEAL]

By: /s/ Sondra Joyner
Deputy Clerk

Copies:
Sherry Grant Hall, Esquire
Jack D. Kelly
Philip A. Bates, Esquire

SUPREME COURT OF FLORIDA
DATED May 3, 1995

JACK KELLY,	* *	
Appellant/Petitioner,	* *	CASE NO. 85,600
v.	* *	
TREE FARM	* *	DISTRICT COURT OF
DEVELOPMENT	* *	APPEAL,
CORPORATION, ETC.,	* *	1ST DISTRICT -
Appellee/Respondent.	* *	NO. 94-2167

It appearing to the Court that it is without jurisdiction, the Petition for Review is hereby dismissed and no motion for rehearing will be entertained by the Court.

It appearing to the Court that the District Court of Appeal, First District, did not declare invalid a State Statute or a provision of the State Constitution, and that, therefore, it is without jurisdiction, this appeal is hereby dismissed subject to reinstatement if jurisdiction is established on proper motion filed with fifteen (15) days from the date of this order. See Article V, Section 3(b)(1), Florida Constitution.

A True Copy

TEST:

[SEAL]

/s/ Sid J. White
Sid J. White
Clerk Supreme Court

H

cc. Hon. Jon S. Wheeler, Clerk
Hon. Ernie Lee Magaha, Clerk
Hon. Joseph O. Tarbuck, Judge

Mr. Jack David Kelly
Mr. Stephen Moorhead
Mr. E. D. "Bob" Pierce
Mr. Carl R. Pennington, Jr.
Mr. Emory O. Williams
Mr. Philip A. Bates

IN THE DISTRICT COURT OF APPEAL,
FIRST DISTRICT, STATE OF FLORIDA

JACK KELLY,

Appellant,

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED.

v.

CASE NO. 94-2167

TREE FARM DEVELOPMENT CORPORATION,
a foreign corporation,
Appellee.

_____/

Opinion filed March 10, 1995.

An appeal from the Circuit Court for Escambia County.
Joseph Q. Tarbuck, Judge.

Sherry Grant Hall of The Hall Law Firm, P.A., Destin, for Appellant.

Philip A. Bates of Clark, Partington, Hart, Larry, Bond, Stackhouse & Stone, Pensacola, for Appellee.

PER CURIAM.

AFFIRMED.

WEBSTER, MICKLE and BENTON, JJ., CONCUR.

DISTRICT COURT OF APPEAL, FIRST DISTRICT
Tallahassee, Florida 32399
Telephone No. (904) 488-6151
DATED October 13, 1994
CASE NO.: 94-02167

L. T. CASE NO. 91-0309

Jack Kelly	v.	Tree Farm Development Corporation
Appellant(s),		Appellee(s).

BY ORDER OF THE COURT:

Appellee's motion for extension of time to serve answer brief, filed on October 3, 1994, is granted. Time for service of the answer brief is extended to October 11, 1994.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

/s/ Jon S. Wheeler
JON S.. WHEELER, CLERK [SEAL]

By: /s/ Laurie Black
Deputy Clerk

Copies:

Sherry Grant Hall
Ernie Lee Magaha
Philip A. Bates

IN THE CIRCUIT COURT IN AND
FOR ESCAMBIA COUNTY, FLORIDA
DATED October 6, 1994

TREE FARM DEVELOPMENT
CORPORATION,
Plaintiff,

v.

JACK D. KELLY,
Defendant.

CASE NO. 91-0309-CA-01
Division "C"

ORDER

THIS CAUSE having come on before the Court upon the Motion of Tree Farm Development Corporation to Supplement the record in this case, and it appearing to the Court that the record has not yet been transmitted to the District Court of Appeal and that this Court therefore has jurisdiction for purposes of this matter, and it appearing further that there is no objection to the relief sought by the Appellee, Tree Farm Development Corporation, it is thereupon,

CONSIDERED, ORDERED AND ADJUDGED that the Clerk of this Court shall supplement the record by adding and including the matters and papers indicated in the Plaintiff-Appellee's Motion.

DONE AND ORDERED in Chamber at Pensacola, Escambia County, Florida, this the 6th day of October, 1994.

/s/ Joseph Q. Tarbuck
HONORABLE JOSEPH Q. TARBUCK

Conformed Copy to:

Philip A. Bates
Sherry G. Hall
Steven R. Moorhead
Carl R. Pennington
Emory O. Williams

DISTRICT COURT OF APPEAL, FIRST DISTRICT
Tallahassee, Florida 32399
Telephone No. (904) 488-6151
DATED September 22, 1994
CASE NO.: 94-02167

L. T. CASE NO. 91-0309

Jack Kelly	v.	Tree Farm Development Corporation
Appellant(s),		Appellee(s).

BY ORDER OF THE COURT:

Appellant's motion for extension of time to serve initial brief, filed on September 9, 1994, is granted. Time for service of the initial brief is extended to September 12, 1994.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

/s/ Jon S. Wheeler
JON S.. WHEELER, CLERK [SEAL]

By: /s/ Laurie Black
Deputy Clerk

Copies:

Sherry Grant Hall
Ernie Lee Magaha
Philip A. Bates

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA
DATED June 16, 1994

TREE FARM DEVELOPMENT CORPORATION,
Plaintiff,

v.

JACK D. KELLY,
Defendant

Case No. 93-181 and No. 91-4119 consolidated into
CASE NO. 91-0309-CA-01
Division "K"

FINAL JUDGMENT

THIS CAUSE having come on to heard before the Court upon the Motion of Tree Farm Development Corporation for Summary Final Judgment, and the Court having reviewed all of the pleadings and paper in this case, which includes Case No. 93-181 in the Circuit Court in and for Escambia County, Florida, transferred from the Circuit Court, Second Judicial Circuit in and for Leon County, Florida, and consolidated into Case No. 91-0309 in the Circuit Court in and for Escambia County, Florida; as well as Case No. 91-4119 in the Circuit Court in and for Escambia County, Florida, consolidated into this Case No. 91-0309, and the proofs submitted by the Plaintiff, the discovery and other papers in the consolidated court file, and having heard the argument of counsel and being otherwise fully advised in the premises, finds and decides that there is no genuine issue of material fact and the Plaintiff is entitled to judgment as a matter of law. It is thereupon

CONSIDERED, ORDERED AND ADJUDGED as follows:

1. The title of the Plaintiff, Tree Farm Development Corporation, to the following described real property in Escambia County, Florida:

Parcel 1:

Commencing at the Northwest corner of Section 9, Township 1 South, Range 31 West, Escambia County,

Florida; thence run South along the West line of said Section 9 for 89.95 feet to the South right of way line of State Highway No. 10 (200'R/W Nine Mile Road) and the Point of Beginning: Thence continue South and along the West line of Section 9 for 2544.21 feet; thence 90°18'33" left for 2653.89 feet; thence 89°43'42" left for 2548.40 feet to the south right of way line of State Highway No. 10; thence 90°21'15" left and along said right of way line for 2651.91 feet to the Point of Beginning, containing 155.08 acres.

Parcel 2:
Commencing at the Southwest corner of Section 9, Township 1 South, Range 31 West, Escambia County, Florida; thence run East along the South line of Section 9 for 2655.94 feet; thence 89°51'33" left for 2640.65 feet; thence 90°16'18" left for 2653.89 feet to the West line of Section 9; thence 89°41'27" left and along the West line of said Section 9 for 2634.16 feet to the Point of Beginning, containing 160.74 acres.

Parcel 3:
Commencing at the Northwest corner or Section 16, Township 1 South, Range 31 West, Escambia County, Florida; thence run South along the West line of said Section 16 for 1980.82 feet; thence 91°09'39" left for 1318.90 feet; thence 90°12'59" right for 672.70 feet; thence 90°02'54" left for 1337.33 feet; thence 89°46'43" left for 2640.31 feet to the North line of Section 16; thence 90°08'27" left and along the North line of said Section 16 for 2655.94 feet to the Point of Beginning, containing 141.31 acres.

Parcel 4-A:
Commencing at the Southeast corner of Section 8, Township 1 South, Range 31 West, Escambia County, Florida; thence run West along the South line of Section 8 for 1992.16 feet; thence 90°27'09" right for 2639.37 feet;

thence 89°41'50" right for 1941.42 feet to the East line of Section 8, thence 90°17'24" right and along the East line of said Section 8 for 2634.16 feet to the Point of Beginning, containing 120.57 acres.

Parcel 4-B:
Commencing at the Southeast corner of Section 8, Township 1 South, Range 31 West, Escambia County, Florida; thence run West along the South line of said Section 8 for 1992.16 feet to the Point of Beginning: Thence continue West along same line for 1992.16 feet; thence 90°27'55" right for 2644.59 feet; thence 89°41'04" right for 1991.42 feet; thence 90°18'10" right for 2639.37 feet to the Point of Beginning, containing 120.81 acres.

Parcel 5:
Commencing at the Northeast corner of Section 9, Township 1 South, Range 31 West, Escambia County, Florida; thence run South along the East line of said Section 9 for 94.46 feet to the South right of way line of State Highway No. 10 (200 N/W - Nine Mile Road) and the Point of Beginning: Thence continue South and along the East line of said Section 9 for 2552.68 feet; thence 89°45'56" right for 2653.88 feet; thence 90°16'18" right for 2548.40 feet to the South right of way line of State Highway No. 10; then 89°38'45" right and along said right of way line for 2651.90 feet to the Point of Beginning, containing 155.31 acres.

Parcel 6:
All of Rosemont Subdivision, a subdivision of a portion of Section 9, Township 1 South, Range 31 West, Escambia County, Florida according to plat recorded in Plat Book 1 at Page 4 of the public records of said County.
ALSO
All of First Addition to Rosemont Subdivision, a subdivision of a portion of Section 9, Township 1 South, Range 31 West, Escambia County, Florida, according to

plat recorded in Plat Book 1 at Page 9 of the public records of said County.

Parcel 7:
Commencing at the Northeast corner of Section 16, Township 1 South, Range 31 West, Escambia County, Florida; thence run South along the East line of said Section 16 for 2643.09 feet; thence 90°00'59" right for 2667.38 feet; thence 90°13'17" right for 2640.31 feet; thence 89°51'33" right for 2655.93 feet to the Point of Beginning, containing 161.42 acres.

Parcel 8:
Commencing at the Northeast corner of Section 16, Township 1 South, Range 31 West, Escambia County, Florida; thence run South along the East line of said Section 16 for 2643.09 feet; thence 90°00'59" right for 1333.69 feet to the Point of Beginning; thence 89°57'06" left for 1312.16 feet; thence 1°26'06" right for 351.44 feet to the Northerly right of way line of U. S. Highway No. 90 (200R/W Mobile Highway); thence 62°07'00" left and along said right of way for 524.35 feet; thence 119°01'00" left for 605.29 feet; thence 90°09'00" right for 870.75 feet; thence 89°46'53" right for 1335.40 feet; thence 89°54'34" left for 660.43 feet to the Point of Beginning, containing 65.18 acres.

is a good title as against the claims or purported claims of the Defendant, Jack D. Kelly, and all other parties claiming by, through, under, or against him; and all other parties having or claiming to have any right, title, or interest in that property; and of all persons claiming by, through, or under Defendant since the filing of the Notice of Lis Pendens; and those claims or purported claims are canceled; and title to the property is forever quieted in the Plaintiff, Tree Farm Development Corporation.

2. All of the claims, counterclaims, and defenses of the Defendant, Jack D. Kelly, in each of the several consolidated cases, shall be and the same are hereby dismissed with prejudice.

3. This Court reserves jurisdiction for purposes of awarding costs and such attorneys' fees as may be appropriate.

DONE and ORDERED in Chambers at Pensacola, Escambia County, Florida, this 16th day of June, 1994.

\s\ Joseph Q. Tarbuck
JOSEPH Q. TARBUCK
CIRCUIT COURT JUDGE

Conformed Copies to:

Philip A. Bates
P. O. Box 13010
Pensacola, FL 32501

John Kevin Griffin
P. O. Box 1030
Pensacola, FL 32595-1030

Emory O. Williams
Florida Department of
Transportation
605 Suwannee Street
Tallahassee, FL 32399-0458

Stephen Moorhead
4300 Bayou Blvd.
Suite 12-13
Pensacola, FL 32503

Carl R. Pennington
3375 Capitol Circle
P. O. Box 13527
Tallahassee, FL 32317

E. D. "Bob" Pierce
1401 North "B" Street
Pensacola, FL

Plaintiff's address:

Tree Farm Dev. Corp.
23 Lexington Avenue
Cambridge, MA 02138

Defendant's address:

Jack D. Kelly
3331 Summit Blvd.
Apt. 87
Pensacola, FL 32503

IN THE CIRCUIT COURT IN AND
FOR ESCAMBIA COUNTY, FLORIDA
DATED June 3, 1994

TREE FARM DEVELOPMENT
CORPORATION, a foreign
corporation,
Plaintiff,

vs. CASE NO. 91-0309

JACK D. KELLY,
Defendant.

_____/

**ORDER ON PLAINTIFF'S MOTION
FOR SUMMARY FINAL JUDGMENT**

Maple Leaf Development Corporation, hereinafter referred to as "Maple Leaf" was incorporated as a Florida corporation in April of 1970. On July 1, 1971, Maple Leaf acquired title to approximately 1080.42 acres as well as Rosemont Subdivision and the First Addition thereto.

On or about December 3, 1971, Maple Leaf entered into an agreement entitled "Agreement and Plan of Reorganization" with Tree Farm Development Corporation, a Delaware corporation, hereinafter referred to as "Tree Farm" and five individuals, Jack D. Kelly, Abraham I. Pierce, Emory O. Williams, Jr., George G. Phillips, Jr., and E. D. Bob Pierce. The agreement basically provides for the merger of Maple Leaf into Tree Farm. About January 18, 1972, Tree Farm and Maple leaf entered into an Agreement of Merger. Item Four of the Agreement of Merger provides as follows:

> This Agreement and Plan of Merger shall be filed with the Secretary of State of Delaware and with the Department of State of Florida and the merger provided for herein shall become effective on the date on which the last act required to complete said merger under the respective laws of Delaware and Florida is performed.

The Agreement of Merger was signed by the president of each

entity, Kelly signing as President of Maple Leaf, and each was attested to by each secretary. The Agreement of Merger was filed with the office of the Secretary of State of the State of Florida on February 1, 1972, and the same was also filed in the offices of the Department of State of the State of Delaware on February 2, 1972, and a Certificate as to the merger was filed in the public records of Escambia County, Florida, on February 11, 1972, and said Agreement was also filed with the Recorder of Deeds in Delaware on February 2, 1972.

In connection with the Agreement of Merger, each of the Maple Leaf shareholders, including Jack D. Kelly, executed, sealed and delivered a General Release dated January 28, 1972.

On or about November 14, 1977, the Barnett Bank of Pensacola, formerly the First Bank & Trust Company of Pensacola, executed and delivered a Special Warranty Deed to Tree Farm as to the property therein described which purports to be the Rosemont Subdivision and the First Addition thereto. Defendant, Jack D. Kelly, has filed numerous documents in the public records of Escambia County, Florida, wherein he claims to be the owner of some or all of the acreage and subdivision property. Tree Farm filed this suit on January 22, 1991, seeking to quiet title to all of the acreage and subdivision property owned by Tree Farm.

Prior to the quiet title suit being filed, Kelly filed suit in Leon County, Florida in September of 1990, where in the relief sought was vacation of the merger. An order was entered in Leon County transferring the case to Escambia County, which order was appealed by Kelly to the First District Court of Appeal, the Florida Supreme Court, and the United States Supreme Court, each court ruling against Kelly. In 1990, Kelly also filed suit against Tree Farm in the form of a "Petition to Implement Protective Measures". An order was entered in September 30, 1992, consolidating said action with this quiet title action, which order was also appealed by Kelly to the First District Court of Appeal and the Florida Supreme Court, resulting in decisions adverse to Kelly. On September 29, 1993, an order was entered consolidating the two suits instituted by Kelly with the quiet title suit instituted by Tree Farm, which order Kelly also appealed to the First district Court of Appeal which dismissed the same and the Florida Supreme Court denied Kelly's

petition for review. The issues presented in all three cases are identical in nature and the decision made herein shall be dispositive of all such issues.

Kelly, individually, and as President of Maple Leaf, along with the other stockholders of Maple Leaf signed the Agreement and Plan of Reorganization and Kelly, as president of Maple Leaf, along withe the secretary, Emory O. Williams, Jr., also signed the Agreement of Merger. Further, Defendant released any claim he had to his shares or any other interest he may have in and to Maple Leaf to Tree Farm.

According to the corporation laws of both Delaware and Florida, the merger became effective on February 2, 1972, and Maple Leaf ceased to exist and Tree Farm was the owner of all property previously owned by Maple Leaf. The numerous documents or claims filed by Kelly in the public records of Escambia County might be construed to be clouds on the title of the real property now owned by Tree Farm and therefore Tree Farm is entitled to bring this quiet title action.

There is no contention that Kelly claims adverse possession inasmuch as he is not in possession of the property nor has he ever been in possession of the property nor has Kelly paid the ad valorem taxes on said property since said property was acquired by Tree Farm in February of 1972. The notice of Lis Pendens dated May 7, 1979, and the numerous affidavits or documents do not cite any legal or factual basis upon which Kelly can properly assert any claim of title to the property in question and, furthermore, all of the foresaid have now become moot and unenforceable as a matter of law inasmuch as Kelly did not institute any action within one year of filing of each of the aforesaid documents.

Further, Kelly should not now be permitted to institute a claim that the merger was never completed inasmuch as he has received the fruits thereof. Further, Kelly should be barred by the equitable doctrines of estoppel and laches since he waited over eighteen and one-half years before instituting suit to vacate or have declared illegal the merger. Further, pursuant to F.S. 95.11(3)(p) any suit with regard to matters surrounding the merger should have been brought within five years of discovery by Kelly of facts giving rise to a defective merger. In this regard, Kelly himself has documented

his knowledge of the existence of such a prospective claim inasmuch as it is clear that as of January 17, 1979, Kelly was advised by the Honorable Curtis Golden, State Attorney, First Judicial Circuit of Florida, that a grand jury has considered his various allegations and had determined that there was no basis for any kind of criminal action arising out the merger. In said correspondence from Mr. Golden, Kelly was further advised that his grievances, if any, were civil and not criminal in nature.

It appears further that Kelly has made claim that a fraud was practiced upon him by the other shareholders of Maple Leaf, particularly Emory O. Williams, Jr. and George G. Phillips, Jr. F.S. 95.11 provides that a legal or equitable action founded on fraud shall be commenced within four years. Because of some changes in 1975 with respect to the statute of limitations in existence in 1972, it appears that actions grounded upon fraud must be, in any event, instituted within twelve years after the date of the commission of alleged fraud, regardless of the date of fraud was or should have been discovered. Initially, it should be noted that Kelly has not plead claims of misrepresentation and fraud with the particularity required by Florida law. However, even if properly plead, any action on fraud is barred if filed later than February 3, 1984. As indicated, Kelly's action was first commenced in 1990.

In summary, Kelly's claim is barred because he was not seized or possessed of the property within seven years prior to the commencement of his action. Any liens or claims filed by Kelly prior to the filing of his first suit in 1990 have been time-barred. The doctrines of laches and estoppel are a bar to Kelly's claim inasmuch as he did not act promptly in judicially asserting the invalidity of the merger. Also, an examination of all of the agreements entered into between Maple Leaf and Tree Farm clearly indicate that Kelly was in agreement therewith, signed all of the necessary documents, and realized the fruits of the merger. An examination of Kelly's counterclaim and affirmative defense will readily show that the claims made therein are insufficient as a matter of law. It is therefore

DONE AND ORDERED that motion of Plaintiff, TREE FARM DEVELOPMENT CORPORATION, for summary judgment, be, and the same is hereby granted. That Kelly's

counterclaim and affirmative defenses be, and the same are hereby dismissed. That counsel for Plaintiff shall prepare an appropriate summary final judgment quieting title in Plaintiff in and to the property described in the complaint filed herein.

DONE AND ORDERED at Pensacola, Escambia County, Florida, this the 3rd day of June, 1994.

/s/ Joseph Q. Tarbuck
JOSEPH Q. TARBUCK, CIRCUIT JUDGE

Conformed Copy to:

Philip A. Bates, Esq.
John Kevin Griffin, Esq.

SUPREME COURT OF FLORIDA
DATED May 5, 1994

JACK KELLY,ETC.	*	
Appellant,	*	CASE NO. 83,371
v.	*	
TREE FARM	*	DISTRICT COURT OF
DEVELOPMENT	*	APPEAL,
CORPORATION, ET AL.,	*	1ST DISTRICT - NO. 93-3607
Appellees.	*	
	*	

* * * * * * * * * * * * * * *

Appellant's Motion for Reinstatement filed in the above cause is hereby denied.

GRIMES, C.J., OVERTON, McDONALD, SHAW and HARDING, JJ., concur

A True Copy

TEST:

[SEAL]

/s/ Sid J. White
Sid J. White
Clerk Supreme Court

TC

cc. Hon. Jon S. Wheeler, Clerk
Hon. Ernie Lee Magaha, Clerk
w/copy to Circuit Judge
Mr. Jack David Kelly
Mr. Philip A. Bates
Mr. Stephen R. Moorhead
Mr. Carl R. Pennington
Mr. Emory O. Williams

SUPREME COURT OF FLORIDA
DATED March 18, 1994

JACK KELLY, ETC.	* *	
Appellant/Petitioner,	* *	CASE NO. 83,371
v.	* *	
TREE FARM	* *	DISTRICT COURT OF
DEVELOPMENT	* *	APPEAL,
CORPORATION, ET AL.,	* *	1ST DISTRICT -
Appellees/Respondents.	* *	NO. 93-3607

It appearing to the Court that the notice was not timely filed and further that it is without jurisdiction under Article V of the Florida Constitution, the Petition for Review is hereby dismissed and no motion for rehearing will be entertained by the Court.

It appearing to the Court that the District Court of Appeal, First District, did not declare invalid a State Statute or a provision of the State Constitution, and that, therefore, it is without jurisdiction, this appeal is hereby dismissed subject to reinstatement if timeliness and jurisdiction are established on proper motion filed within fifteen (15) days from the date of this order. See Article V, Section 3(b)(1), Florida Constitution.

A True Copy

TEST:

[SEAL]

/s/ Sid J. White
Sid J. White
Clerk Supreme Court

H

cc. Hon. Jon S. Wheeler, Clerk
Hon. Ernie Lee Magaha, Clerk
w/copy to Circuit Judge
Mr. Jack David Kelly
Mr. Philip A. Bates
Mr. Stephen R. Moorhead
Mr. Carl R. Pennington
Mr. Emory O. Williams

DISTRICT COURT OF APPEAL, FIRST DISTRICT
Tallahassee, Fl. 32399
Telephone (904) 488-6151
DATE February 9, 1994
CASE NO. 93-3607

LT 91-0309-CA-01

JACK D. KELLY, etc. et al. appellant/petitioner	vs.	TREE FARM DEVELOPMENT CORP., et al. appellees/respondent

BY ORDER OF THE COURT:

Appellee's motion filed December 6, 1993, is granted and this appeal is dismissed for lack of jurisdiction. Appellee's motion, insofar as it seeks other sanctions, is denied.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

/s/ Jon S. Wheeler
JON S. WHEELER, CLERK

By: /s/Laurie Black [SEAL]
Deputy Clerk

Copies:
Jack D. Kelly
Stephen R. Moorehead
George G. Phillips, Jr.
Philip A. Bates
Ronald W. Miller
Ernie Lee Magaha

DISTRICT COURT OF APPEAL, FIRST DISTRICT
Tallahassee, Fl. 32399
Telephone (904) 488-6151
DATE January 10, 1994
CASE NO. 93-3607

JACK D. KELLY, etc. et al. appellant/petitioner	vs.	TREE FARM DEVELOPMENT CORP., et al. appellees/respondent

BY ORDER OF THE COURT:

This court is in receipt of a motion for extension of time which although styled in the circuit court, is clearly directed to this court. The motion is granted and time to respond to the motion to dismiss is extended to 15 days from date of this order.

I HEREBY CERTIFY that is (a true copy of) the original court order.

/s/ Jon S. Wheeler
JON S. WHEELER, CLERK

By: /s/Laurie Black [SEAL]
Deputy Clerk

Copies:
Jack D. Kelly
Stephen R. Moorehead
George G. Phillips, Jr.
Philip A. Bates
Ronald W. Miller

DISTRICT COURT OF APPEAL, FIRST DISTRICT
Tallahassee, Fl. 32399
Telephone (904) 488-6151
DATE December 16, 1993
CASE NO. 93-03607

L.T. CASE NO. 91-0309-CA-01

JACK D. KELLY, etc. et al.
appellant(s),

vs.

TREE FARM DEVELOPMENT CORP., et al.
appellee(s).

BY ORDER OF THE COURT:

The appellant shall show cause within 10 days from the date of this order why this appeal should not be dismissed for failure of appellant to comply with this court's order dated November 16, 1993, requiring a copy of the order being appealed.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

/s/ Jon S. Wheeler
JON S. WHEELER, CLERK

By: /s/Laurie Black
Deputy Clerk

[SEAL]

Copies:
Jack D. Kelly
Stephen R. Moorehead
George G. Phillips, Jr.
Philip A. Bates
Ronald W. Miller

DISTRICT COURT OF APPEAL, FIRST DISTRICT
Tallahassee, Fl. 32399
Telephone (904) 488-6151
DATE December 9, 1993
CASE NO. 93-03607

L.T. CASE NO. 91-0309-CA-01

JACK D. KELLY, etc. et al. appellant(s),	vs.	TREE FARM DEVELOPMENT CORP., et al. appellee(s).

BY ORDER OF THE COURT:

Appellant to show cause within 10 days from this date why the motion served on December 1, 1993 should not be granted.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

/s/ Jon S. Wheeler
JON S. WHEELER, CLERK

By: /s/Laurie Black [SEAL]
Deputy Clerk

Copies:
Jack D. Kelly
Stephen R. Moorehead
George G. Phillips, Jr.
Philip A. Bates
Ronald W. Miller

DISTRICT COURT OF APPEAL, FIRST DISTRICT
Tallahassee, Fl. 32399
Telephone (904) 488-6151
DATE November 16, 1993
CASE NO. 93-03607

L.T. CASE NO. 91-0309-CA-01

JACK D. KELLY, etc. et al.
appellant(s),

vs.

TREE FARM DEVELOPMENT CORP., et al.
appellee(s).

BY ORDER OF THE COURT:

Upon the Court's own motion, appellant is directed to file within 10 days from the date of this order an amended notice of appeal which states the date of rendition of the order to be reviewed. A copy of Florida Rule of Appellate 9.020(g) which defines "rendition" is attached hereto. Also attached for guidance is a sample form of an amended notice of appeal. The amended notice of appeal shall be filed with this court and not the lower tribunal. The failure of appellant to timely comply with this order could result in the imposition of sanctions, including dismissal of the appeal. Florida Rule of Appellate Procedure 9.410.

/s/ Jon S. Wheeler
JON S. WHEELER, CLERK

By: /s/Vickie Maloy
Deputy Clerk

[SEAL]

Copies:
Jack D. Kelly
Stephen R. Moorehead
George G. Phillips, Jr.
Philip A. Bates
Carl R. Pennington, Jr.
Ronald W. Miller

DISTRICT COURT OF APPEAL, FIRST DISTRICT
Tallahassee, Fl. 32399
Telephone (904) 488-6151
DATE November 16, 1993
CASE NO. 93-03607

L.T. CASE NO. 91-0309-CA-01

JACK D. KELLY, etc. et al. appellant(s),	vs.	TREE FARM DEVELOPMENT CORP., et al. appellee(s).

BY ORDER OF THE COURT:

Upon the Court's own motion, pursuant to Florida Rules of Appellate Procedure 9.110(d), and/or 9.130(c), appellant is directed to file within 10 days from the date of this order conformed copies of the order(s) of the lower tribunal from which the appeal is being taken, together with any order entered on a timely motion postponing rendition of the order(s) appealed. The conformed copies shall be filed by the appellant with a notice of filing which contains a certificate of service reflecting service on all counsel or parties in the case. Florida Rule of Appellate Procedure 9.420(c).

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

/s/ Jon S. Wheeler
JON S. WHEELER, CLERK

By: /s/Vickie Maloy [SEAL]
Deputy Clerk

Copies:
Jack D. Kelly
Stephen R. Moorehead
George G. Phillips, Jr.
Ernie Lee Magaha
Philip A. Bates
Carl R. Pennington, Jr.
Ronald W. Miller

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA
DATED September 29, 1993

TREE FARM DEVELOPMENT CORPORATION,
Plaintiff,

v.

CASE NO. 91-0309-CA-01
Division "K"

JACK D. KELLY,
Defendant

ORDER ON PLAINTIFF'S MOTION TO CONSOLIDATE AND MOTION TO COMPEL DISCOVERY AND ON DEFENDANT'S MOTION FOR PROTECTIVE ORDER

THIS CAUSE came on before the Court for hearing upon the Motion of the Plaintiff, Tree Farm Development Corporation, (hereinafter "Tree Farm") to consolidate this action with the case styled Jack D. Kelly v. Tree Farm Development Corporation, the same being Case No. 93-181 currently pending in Escambia County, Florida (formerly Leon County Circuit Court Case No. 90-3398), and the Motion of the Plaintiff to Compel Discovery, as well as the Motion of the Defendant, Jack D. Kelly, for Protective Order. The Court having heard the argument of counsel, and being fully advised in the premises, finds and decides as follows:

1. This case and the Case No. 93-181 described above involve common questions of law and fact. The Court finds, pursuant to Rule 1.270(a), Fla. R. Civ. P., that these cases should be consolidated and, accordingly, the Plaintiff's Motion to Consolidate Cases is hereby granted. This case and Case No. 93-181 shall be consolidated into Case No. 91-0309-CA-01 for all purposes.

2. Tree Farm's Motion to Compel Discovery is granted. The Defendant, Jack D. Kelly, shall make himself available and appear for his deposition within ten (10) days of the date hereof.

3. The Defendant's Motion for Protective Order is denied.

DONE and ORDERED in Chambers at Pensacola, Escambia County, Florida, this the 29th day of September, 1993.

\s\ John T. Parnham
JOHN T. PARNHAM
CIRCUIT JUDGE

Conformed Copies to:

Philip A. Bates
Ronald W. Miller

SUPREME COURT OF FLORIDA
DATED September 27, 1993

JACK DAVID KELLY Petitioner,	*	
v.	*	Case No. 81,775
TREE FARM DEVELOPMENT CORP. Respondent.	*	District Court of Appeal 1st District - No. 92-4361

Appellant's Motion for Reinstatement filed in the above cause is hereby denied.

OVERTON, SHAW, GRIMES, KOGAN and HARDING, JJ., concur

A TRUE COPY

TEST:

/s/ Sid J. White
Sid J. White
Clerk Supreme Court

[SEAL]

TC

cc: Hon. Jon S. Wheeler, Clerk
Hon. Ernie Lee Magaha, Clerk
(w/copy to Circuit Judge)

Mr. Ronald W. Miller
Mr. Philip Bates

SUPREME COURT OF FLORIDA
DATED July 7, 1993

JACK DAVID KELLY
Petitioner,

vs. Case No. 81,775

TREE FARM DEVELOPMENT CORP.
Respondent.

* *

Appellant's Motion for Enlargement Of Time To File Reinstatement is granted. Appellant shall file a Motion For Reinstatement on or before July 27, 1993.

Motion For Extension Of Time to File Initial Brief On Appeal is denied.

A TRUE COPY

TEST:

/s/ Sid J. White
Sid J. White
Clerk Supreme Court

[SEAL]

bdm
c: Mr. Ronald W. Miller
Mr. Philip Bates

SUPREME COURT OF FLORIDA
DATED June 1, 1993

JACK KELLY,	* *	
Appellant,	* *	
v.	* *	CASE NO. 81,775
TREE FARM DEVELOPMENT	* *	District Court of Appeal,
CORPORATION,	* *	1st District - No. 92-4361
Appellee.	* *	

It appearing to the Court that the District Court of Appeal, First District, did not declare invalid a State Statute or a provision of the State Constitution, and that, therefore, it is without jurisdiction, this appeal is hereby dismissed subject to reinstatement if jurisdiction is established on proper motion filed within fifteen (15) days from the date of this order. See Article V, Section 3 (b)(1), Florida Constitution.

TC

A True Copy

TEST:

[SEAL]

Sid J. White
Clerk, Supreme Court

cc: Hon. Jon S. Wheeler, Clerk
Hon.Ernie Lee Magaha, Clerk
w/copy to Circuit Judge

Mr. Ronald W. Miller
Mr. Philip A. Bates

DISTRICT COURT OF APPEAL, FIRST DISTRICT
Tallahassee, Fl. 32399
Telephone (904) 488-6151
DATE April 20, 1993
CASE NO. 92-04361

L.T. CASE NO. 91-4119-CA-01

JACK D. KELLY	vs.	TREE FARM DEVELOPMENT CORP.
appellant/petitioner,		appellee/respondent.

BY ORDER OF THE COURT:

Appellee's motion filed February 18, 1993, is granted and this appeal is dismissed for lack of jurisdiction.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

/s/ Jon S. Wheeler
JON S. WHEELER, CLERK

By: /s/Laurie Black [SEAL]
Deputy Clerk

Copies:
Jack D. Kelly
Philip A. Bates
Ronald W. Miller
Ernie Lee Magaha

DISTRICT COURT OF APPEAL, FIRST DISTRICT
Tallahassee, Fl. 32399
Telephone (904) 488-6151
DATE March 23, 1993
CASE NO. 92-04361
L.T. CASE NO. 91-4119-CA-01

JACK D. KELLY	vs.	TREE FARM DEVELOPMENT CORP.
appellant,		appellee(s).

BY ORDER OF THE COURT:

Appellant's request for enlargement of time to submit show cause brief on appellant's motion to strike or dismiss appeal filed March 4, 1993, is granted. Time is extended to March 29, 1993 for appellant to respond to show cause order of February 19, 1993, appellee's motion to dismiss.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

/s/ Jon S. Wheeler
JON S. WHEELER, CLERK

By: /s/Laurie Black [SEAL]
Deputy Clerk

Copies:
Jack D. Kelly
Ernie Lee Magaha
Philip A. Bates

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA
DATED February 22, 1993

TREE FARM DEVELOPMENT CORPORATION,
Plaintiff,

v.

CASE NO. 91-0309-CA-01
Division "K"

JACK D. KELLY,
Defendant.
_____/

ORDER TO QUASH DEPOSITION

THIS CAUSE having come before the Court on defendant's MOTION FOR TO QUASH TAKING OF DEPOSITION, and DEFENDANT'S MOTION TO QUASH ORDER ON MOTION OF PLAINTIFF TO COMPEL DISCOVERY, and the Court being advised in the premises, it is

ADJUDGED that the deposition scheduled in this case to be taken on February 23, 1993 is quashed.

IT IS FURTHER ADJUDGED that the Defendant be given an additional 30 days from the date of this order to obtain counsel.

In the event that the Defendant shall chose to represent himself after that date, he shall be granted the same courtesies as would opposing counsel licensed to practice law in this state.

FURTHER, the order signed by this Court on February 9, 1993, is stayed at this time to allow for the obtaining of counsel or the decision of the Defendant to represent himself.

ORDERED this 22nd day of February, 1993.

/s/ John T. Parnham
CIRCUIT JUDGE

Copies to:
Jack D. Kelly
Philip A. Bates

DISTRICT COURT OF APPEAL, FIRST DISTRICT
Tallahassee, Fl. 32399
Telephone (904) 488-6151
DATE February 19, 1993
CASE NO. 92-04361

LT 91-4119-CA-01

JACK D. KELLY vs. TREE FARM DEVELOPMENT CORP.

appellant(s), appellee(s).

BY ORDER OF THE COURT:

Appellant to show cause within 10 days from this date why the motion served on February 17, 1993 should not be granted.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

/s/ Jon S. Wheeler
JON S. WHEELER, CLERK

By: /s/Vickie Maloy [SEAL]
Deputy Clerk

Copies:
Jack D. Kelly
Philip A. Bates

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA
DATED February 9, 1993

TREE FARM DEVELOPMENT CORPORATION,
Plaintiff,

v.

CASE NO. 91-0309-CA-01
Division "K"

JACK D. KELLY,
Defendant.
_____/

ORDER ON MOTION OF PLAINTIFF TO COMPEL DISCOVERY

This cause came on before the Court on the Motion of Plaintiff, Tree Farm Development Corporation, to Compel Discovery. The Court has reviewed the Motion filed by the Plaintiff, has reviewed the Court file and has heard the argument of counsel. It is thereupon

CONSIDERED, ORDERED AND ADJUDGED that the Defendant, Jack D. Kelly, shall make himself available for deposition of Plaintiff within two weeks following the entry of this Order. The specific date, time, and place for the taking of the deposition shall be noticed by Plaintiff, and according to the applicable Rules of Civil Procedure.

DONE AND ORDERED in Chambers, at Pensacola, Escambia County, Florida, this 9th day of February, 1993.

/s/ John T. Parnham
CIRCUIT JUDGE

Conformed Copies to:
Philip A. Bates
Burton E. Strubhar
CR1266.PAB

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA
DATED February 5, 1993

JACK DAVID KELLY,
Plaintiff,

v.

CASE NO. 91-4119-CA-01
Division "A"

TREE FARM DEVELOPMENT CORPORATION,
Defendant.
_____/

ORDER FOR WITHDRAWAL OF COUNSEL

This cause came to be heard on the Motion to Withdraw filed by Burton E. Strubhar as attorney of record for JACK DAVID KELLY, Plaintiff to withdraw in the action. The Court being duly informed and having heard the evidence and argument by counsel, it is hereby,

ORDERED AND ADJUDGED, as follows: Burton E. Strubhar is hereby allowed to withdraw as attorney to record for JACK DAVID KELLY, and JACK DAVID KELLY shall have 30 days from the date of this Order in which to obtain other counsel.

DONE AND ORDERED in Chambers, at Pensacola, Escambia County, Florida, this 5th day of February, 1993.

/s/ Michael Jones
CIRCUIT JUDGE

Conformed Copies to:
Burton E. Strubhar, Esq.
Attorney for Plaintiff

Philip A. Bates, Esq.
Attorney for Defendant

c:\wp51\work\Kelly\withdraw.not

DISTRICT COURT OF APPEAL, FIRST DISTRICT
Tallahassee, Fl. 32399
Telephone (904) 488-6151
DATE January 21, 1993
CASE NO. 92-4361

JACK D. KELLY	vs.	TREE FARM DEVELOPMENT CORP.
appellant/petitioner		appellees/respondent

BY ORDER OF THE COURT:

Upon consideration of appellant's response, it appears that the notice of appeal was timely filed and this court's order of January 7, 1993, is discharged.

Appellant is directed to serve a copy of his response dated January 11, 1993, on opposing counsel and to file a certificate of service which so demonstrates. Appellant is admonished that copies of all pleadings and briefs filed with this court must be served on opposing counsel and contain a certificate of service.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

/s/ Jon S. Wheeler
JON S. WHEELER, CLERK

By: /s/Laurie Black [SEAL]
Deputy Clerk

Copies:
Jack D. Kelly
Philip A. Bates

DISTRICT COURT OF APPEAL, FIRST DISTRICT
Tallahassee, Fl. 32399
Telephone (904) 488-6151
DATE January 7, 1993
CASE NO. 92-4361

JACK D. KELLY, etc. et al. appellant/petitioner	vs.	TREE FARM DEVELOPMENT CORP., et al. appellees/respondent

BY ORDER OF THE COURT:

Upon the court's own motion the appellant is ordered to show cause within 10 days from the date of this order why the appeal should not be dismissed for failure to timely file the notice of appeal. If any pleading or order is reference in support of the response, a copy of the referenced order or pleading shall be attached to the response.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

/s/ Jon S. Wheeler
JON S. WHEELER, CLERK

By: /s/Laurie Black [SEAL]
Deputy Clerk

Copies:
Jack D. Kelly
Philip A. Bates

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543
DATED December 7, 1992

Mr. Jack David Kelly
3331 Summit Blvd.
Apt. 87
Pensacola, FL 32503

RE: Jack David Kelly, etc.
v. Tree Farm Development Corporation, et al.
No. 92-327

Dear Mr. Kelly:

The Court today entered the following order in the above entitled case:

The petition for rehearing is denied.

Very truly yours,

/s/ William K. Suter
William K. Suter, Clerk

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA
DATED November 23, 1992

JACK DAVID KELLY,
Plaintiff,

v.

CASE NO. 91-4119-CA-01
Division "A"

TREE FARM DEVELOPMENT CORPORATION,
Defendant.
_____/

ORDER ON DEFENDANT'S MOTION FOR REHEARING

This cause, having come on before the Court for hearing on the Defendant's Motion for Rehearing, and it appearing to the Court that the Defendant's Motion should be denied, it is thereupon

CONSIDERED, ORDERED AND ADJUDGED that the Defendant's Motion for Rehearing should be and the same is hereby denied.

DONE AND ORDERED in Chambers, at Pensacola, Escambia County, Florida, this 23rd day of November, 1992.

/s/ Michael Jones
CIRCUIT JUDGE

Conformed Copies to:
Philip A. Bates
Burton E. Strubhar

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543
DATED October 13, 1992

Mr. Burton E. Strubhar
3289 Summit Boulevard
Suite 31B
Pensacola, FL 32503

RE: Jack David Kelly, etc.
v. Tree Farm Development Corporation, et al.
No. 92-327

Dear Mr. Strubhar:

The Court today entered the following order in the above entitled case:

The petition for a writ of certiorari is denied.

Very truly yours,

/s/ William K. Suter
William K. Suter, Clerk

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA
DATED September 30, 1992

JACK DAVID KELLY,
Plaintiff,

v.

CASE NO. 91-4119-CA-01
Division "A"

TREE FARM DEVELOPMENT CORPORATION,
Defendant.
_____/

ORDER ON DEFENDANT'S MOTION TO DISMISS

This cause, having come on before the Court for hearing on the Defendant's Motion to Dismiss the Plaintiff's Amended Complaint, and it appearing to the Court that the relief sought by the Plaintiff would be available, if at all, only as ancillary relief in certain actions or proceedings with respect to real property, and it appearing further that the issue of ownership of the real property which is the subject of the Plaintiff's Amended Complaint is already pending in Case No. 91-0309-CA-01, Division "K," in this Circuit, it is thereupon

CONSIDERED, ORDERED AND ADJUDGED that this case shall be and the same is hereby transferred to, and consolidated with, Case No. 91-0309-CA-01, Division "K."

DONE AND ORDERED in Chambers, at Pensacola, Escambia County, Florida, this 30th day of September, 1992.

/s/ Michael Jones
CIRCUIT JUDGE

Conformed Copies to:
Philip A. Bates
Burton E. Strubhar
CR1019.PAB

SUPREME COURT OF THE UNITED STATES
DATED July 13, 1992

No. A-933

Jack David Kelly,
Petitioner

v.

Tree Farm Development, et al.

ORDER

UPON CONSIDERATION of the application of petitioner,

IT IS ORDERED that the time for filing a petition for a writ of certiorari in the above-entitled case, be and the same is hereby, extended further to and including July 24, 1992.

/s/ Anthony M. Kennedy
Associate Justice of the Supreme
Court of the United States

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA

DATED April 7, 1992

JACK DAVID KELLY,
Plaintiff,

v.

CASE NO. 91-4119-CA-01
Division "A"

TREE FARM DEVELOPMENT CORPORATION,
Defendant.
_____/

ORDER ON DEFENDANT'S MOTION FOR DISMISS

THIS CAUSE came on before the Court for hearing on March 12, 1992, upon the Motion of the Defendant, Tree Farm Development Corporation, to Dismiss the Plaintiff's Complaint pursuant to Rule 1.14(b) Fla. R. Civ. P. The Court has considered the grounds raised by the Defendant and the argument of counsel for Plaintiff and Defendant. The Court being fully advised in the premises finds and decides as follows:

1. The Plaintiff alleges that the Defendant is in possession of certain real property situate in Escambia County, Florida, which property is more particularly described in the Plaintiff's Complaint and will be referred to hereafter as the "Subject Property." The Plaintiff further alleges that a certain merger of two corporations by virtue of which Defendant claims title to the Subject Property, was not properly concluded and the Plaintiff has brought suit to set aside said merger. That action was filed in the Circuit Court of Leon County, Florida, the same being Case No. 90-3398 (hereinafter the "Leon County Action").

2. The Defendant has brought suit in Escambia County, Florida seeking to quiet its title to the Subject Property. that action is pending in the Circuit court of Escambia County, Florida, the same being Case No. 91-0309-CA-01, Division "K" (hereinafter

the "Escambia County Action").

3. By Order of the Circuit Judge in Leon County, Florida, the Leon County Action is to be transferred to Escambia County, Florida. That ruling has been affirmed by the District Court of Appeal. The Plaintiff's appeal from the District Court of Appeal per curiam affirmance of the Leon County Circuit Judge's Order directing the transfer of the Leon County Action to Escambia County, Florida, has been dismissed by the Florida Supreme Court.

4. The Plaintiff alleges that during the pendency of the two legal actions described hereinabove, the Subject Property is deteriorating because, according to Plaintiff, the Defendant is not doing certain things with respect to the Subject Property which Plaintiff contends should be accomplished to preserve and protect the Subject Property.

5. The Plaintiff, therefore, seeks relief in the nature of affirmative injunctive relief to enable the Plaintiff to go upon the Subject Property and do or cause to be done those things Plaintiff contends are necessary to preserve and protect the Subject Property.

6. The Plaintiff's Complaint does not state a claim for relief in the manner and as required by Rule 1.110(b) Fla. R. Civ. P. It is thereupon

CONSIDERED, ORDERED AND ADJUDGED that the Defendant's Motion to Dismiss shall be and the same is hereby granted.

Plaintiff shall have 20 days from the date hereof within which to file and serve his amended complaint if the Plaintiff be so advised. It is further

ORDERED AND ADJUDGED that if any amended complaint filed herein by the Plaintiff shall seek the same relief as was apparently Plaintiff's intention under Plaintiff's original Complaint as explained to the Court by Plaintiff's counsel at the hearing on Defendant's Motion to Dismiss, this Court will favorably consider a Motion by the Defendant for consolidation of this case with the earliest numbered Escambia County Circuit Court case currently pending wherein title to the subject property is at issue as between the Plaintiff and this Defendant.

DONE AND ORDERED in Chambers, at Pensacola,

Escambia County, Florida, this 7th day of April, 1992.

/s/ Michael Jones
CIRCUIT JUDGE

Conformed Copies to:
Philip A. Bates
Burton E. Strubhar
CR733.PAB

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA
DATED March 16, 1992

TREE FARM DEVELOPMENT CORPORATION,
Plaintiff,

v.

CASE NO. 91-0309-CA-01
Division "K"

JACK D. KELLY,
Defendant.
_____/

ORDER ON MOTION OF PLAINTIFF TO COMPEL DISCOVERY

This cause came on before the Court on the Motion of Plaintiff, Tree Farm Development Corporation, to Compel Discovery. The Court has reviewed the Motion filed by the Plaintiff, has reviewed the Court file and has heard the argument of counsel. It is thereupon

CONSIDERED, ORDERED AND ADJUDGED that the Defendant, Jack D. Kelly, shall produce the documents sought by Plaintiff by delivering the originals thereof to the offices of Plaintiff's counsel and there allow same to be examined and copied, such production to accomplished on or before 1:00 p.m., Wednesday, March 25, 1992.

DONE AND ORDERED in Chambers, at Pensacola, Escambia County, Florida, this 16th day of March, 1992.

/s/ John T. Parnham
CIRCUIT JUDGE

Conformed Copies to:
Philip A. Bates
Burton E. Strubhar
CR728.PAB

SUPREME COURT OF FLORIDA

DATE March 10, 1992

JACK D. KELLY, etc.	*	
Appellant,	*	CASE NO.
	*	79,254
v.	*	
TREE FARM	*	District Court
DEVELOPMENT	*	of Appeal,
CORPORATION, et al.,	*	1st District -
Appellees.	*	No. 91-1185
**********	*	

Appellant's Motion to Reinstate Appeal filed in the above cause is hereby denied.

OVERTON, McDONALD, BARKETT, KOGAN and HARDING, JJ., concur

TC

A True Copy

TEST:

Sid J. White
Clerk, Supreme Court

[SEAL]

cc. Hon. Jon S. Wheeler, Clerk
Hon. Paul Hartsfield, Clerk
Hon. J. Lewis Hall, Jr., Judge

Burton E. Strubhar, Esquire
Philip A. Bates, Esquire
Stephen R. Moorhead [sic], Esquire
Carl R. Pennington, Esquire
Emory O. Williams, Esquire
Albert C. Penson, Esquire

SUPREME COURT OF FLORIDA

DATE January 27, 1992

JACK D. KELLY, etc. Appellant,	* *	CASE NO. 79,254
v.	* *	DISTRICT COURT OF
Tree Farm Development	* *	APPEAL,
Corporation, ET AL., Appellees.	* *	1st DISTRICT - NO. 91-1185

It appearing to the Court that the District Court of Appeal, First District, did not declare invalid a State Statute or a provision of the State Constitution, and that, therefore, it is without jurisdiction, this appeal is hereby dismissed subject to reinstatement if jurisdiction is established on proper motion filed within fifteen (15) days from the date of this order. See Article V, Section 3(b)(1), Florida Constitution.

H

cc: Hon. Jon S. Wheeler, Clerk
Hon. Paul Hartsfield, Clerk
Hon. J. Lewis Hall, Jr., Judge

Burton E. Strubhar, Esquire
Albert C. Penson, Esquire
Emory O. Williams, Jr., Esquire
Carl R. Pennington, Esquire
Stephen Moorhead, Esquire
Philip A. Bates, Esquire

[Seal]
Supreme Court
of the State of
Florida

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA
DATED January 21, 1992

JACK DAVID KELLY,
Plaintiff,

v.

CASE NO. 91-4119-CA-01
Division "A"

TREE FARM DEVELOPMENT CORPORATION,
Defendant.
_____/

ORDER VACATING AND SETTING ASIDE DEFAULT

This cause having come on to be heard before the Court upon the Motion to Set Aside Default filed herein by the Defendant, Tree Farm Development Corporation, and the Court having reviewed the Court file, and having heard and considered the proof submitted by the parties and the argument of counsel and being otherwise fully advised on the premises, it is thereupon

CONSIDERED, ORDERED AND ADJUDGED that the default heretofore entered in these proceedings by the Clerk of this Court upon the Motion of the Plaintiff, Jack David Kelly, was entered erroneously and the same shall be and is hereby vacated and set aside.

DONE AND ORDERED in Chambers, at Pensacola, Escambia County, Florida, this 21st day of January, 1992.

/s/ Michael Jones
CIRCUIT JUDGE

Conformed Copies to:
Philip A. Bates
Burton E. Strubhar
CR649.PAB

DISTRICT COURT OF APPEAL, FIRST DISTRICT
Tallahassee, Fl. 32399
Telephone (904) 488-6151
DATE December 19, 1991
CASE NO. 91-1185

L.T. CASE NO. 90-3398

Jack D. Kelly, etc. et al.	v.	Tree Farm Development Corp., et al.
appellant (s),		appellee (s)

ORDER

Motion for rehearing, filed November 22, 1991, is DENIED.

By order of the court

JON S. WHEELER
CLERK

I HEREBY CERTIFY that a true and correct copy of the above was mailed this date to the following:

Jack D. Kelly	Burton Strubhar
Philip A. Bates	Stephen Reid Moorhead
Carl r. Pennington, Jr.	Emory O. Williams, Jr.
Albert C. Penson	Cathi O'Halloran Wilkinson

[SEAL]

/s/ Laurie Black
Deputy Clerk

SUPREME COURT OF FLORIDA

DATE December 11, 1991

JACK D. KELLY, etc. Appellant,	* *	CASE NO. 78,995
v.	* *	DISTRICT COURT OF
Tree Farm Development Corporation, ET AL., Appellees.	* *	APPEAL, 1st DISTRICT - NO. 91-1908

It appearing to the Court that the District Court of Appeal, First District, did not declare invalid a State Statute or a provision of the State Constitution, and that, therefore, it is without jurisdiction, this appeal is hereby dismissed subject to reinstatement if jurisdiction is established on proper motion filed within fifteen (15) days from the date of this order. See Article V, Section 3(b)(1), Florida Constitution.

bdm

cc: Hon. Jon S. Wheeler, Clerk
Hon. Ernie Lee Magaha, Clerk

Burton E. Strubhar, Esquire
Philip A. Bates, Esquire

[Seal]
Supreme Court
of the State of
Florida

DISTRICT COURT OF APPEAL, FIRST DISTRICT
Tallahassee, Fl. 32399
Telephone (904) 488-6151
DATE November 14, 1991
CASE NO. 91-01185

L.T. CASE NO. 90-3398

JACK D. KELLY, etc. et al. appellant(s),	vs.	TREE FARM DEVELOPMENT CORP., et al. appellee(s).

ORDER

Appellee's motion for attorney's fees is denied.

By order of the Court

JON S. WHEELER, CLERK

I HEREBY CERTIFY that a true and correct copy of the above was mailed this date to the following:

Jack D. Kelly	Burton Strubhar
Philip A. Bates	Stephen Reid Moorhead
Carl R. Pennington, Jr.	Emory O. Williams, Jr.
Albert C. Penson	Cathi O'Halloran Wilkinson

[SEAL]

By: /s/ Laurie Black
Deputy Clerk

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

JACK D. KELLY, etc. Appellant,	NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED.
v.	
TREE FARM DEVELOPMENT CORP., et al., Appellees.	CASE NO. 91-1185

Opinion filed November 7, 1991.

An Appeal from the Circuit Court for Leon County.
J. Lewis Hall, Jr., Judge.

Burton E. Strubhar, Pensacola, for Appellant.

Carl R. Pennington, Jr. and Cathi C. Wilkinson of Pennington, Wilkinson, Dunlap, Bateman and Camp, P.A., Tallahassee, for Appellee Tree Farm Development Corp.

Philip A. Bates of Clark, Partington, hart, Larry, Bond, Stackhouse & Stone, Pensacola, for Appellee E.D. "Bob" Pierce.

Emory O. Williams, Jr., West Palm Beach, for Appellee Estate of Emory O. Williams.

Stephen R. Moorhead of McDonald, Fleming & Moorhead, Pensacola, of Appellee Estate of Abraham L. Pierce.

PER CURIAM.

AFFIRMED.

JOANOS, C.J., and SMITH and ALLEN, JJ. CONCUR..

DISTRICT COURT OF APPEAL, FIRST DISTRICT
Tallahassee, Fl. 32399
Telephone (904) 488-6151
DATE November 6, 1991
CASE NO. 91-1908

JACK D. KELLY	vs.	TREE FARM DEVELOPMENT CORP.
appellant/petitioner		appellees/respondent

ORDER

Appellee's motion filed October 15, 1991, seeking an award of attorney's fees, is denied.

By order of the court

JON S. WHEELER, CLERK

I HEREBY CERTIFY that a true and correct copy of the above was mailed this date to the following:

Burton E. Strubhar

Philip A. Bates

[SEAL]

By: /s/ Laurie Black
Deputy Clerk

DISTRICT COURT OF APPEAL, FIRST DISTRICT
Tallahassee, Fl. 32399
Telephone (904) 488-6151
DATE October 28, 1991
CASE NO. 91-1908

JACK D. KELLY	vs.	TREE FARM DEVELOPMENT CORP.
appellant/petitioner		appellees/respondent

ORDER

Appellee's motion for rehearing of this court's order of September 10, 1991, is denied.

By order of the court

[SEAL] JON S. WHEELER, CLERK

I HEREBY CERTIFY that a true and correct copy of the above was mailed this date to the following:

Burton E. Strubhar
Philip A. Bates

By: /s/ Sondra Joyner
Deputy Clerk

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

DATED October 22, 1991

JACK D. KELLY, etc.	)	
Appellant,	)	
v.	)	CASE NO. 91-1185
TREE FARM DEVELOPMENT	)	
CORP., et al.,	)	
Appellees.	)	

ORDER

The motion for attorney's fees filed by appellee E. D. "Bob" Pierce on authority of section 57.105, Florida Statutes (1989) is denied.

By Order of the Court dated the 22nd day of October, 1991.

A True Copy

ATTEST

JON S. WHEELER, CLERK [SEAL]

/s/ Jon S. Wheeler
District Court of Appeal, First District
Tallahassee, Florida

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

DATED October 21, 1991

JACK D. KELLY, etc.	)	
Appellant,	)	
v.	)	CASE NO. 91-1185
TREE FARM DEVELOPMENT	)	
CORP., et al.,	)	
Appellees.	)	

ORDER

Appellant's motion for rehearing of this court's order of September 12, 1991 denying appellant's motion to supplement the record is denied.

By Order of the Court dated the 21st day of October, 1991.

A True Copy

ATTEST

JON S. WHEELER, CLERK [SEAL]

/s/ Jon S. Wheeler
District Court of Appeal, First District
Tallahassee, Florida

DISTRICT COURT OF APPEAL, FIRST DISTRICT
Tallahassee, Fl. 32399
Telephone (904) 488-6151
DATE October 17, 1991
CASE NO. 91-1185

Mr. Burton Strubhar, Esq.
3298 Summit Blvd., Ste. 31B
P. O. Box 30215
Pensacola, FL 32503

RE: 91-1185 Jack D. Kelly, et al. v. Tree Farm Development Corp., et al.

Dear Mr. Strubhar:

Pursuant to Rule 9.320, the Court has dispensed with oral argument in the above cause. If the Court reconsiders its decision and wishes argument, you will be notified.

Yours truly,

/s/ Sondra Joyner
Jon S. Wheeler, Clerk
By: Deputy Clerk

JSW/sj

xc: Mr. Jack D. Kelly
Mr. Philip A. Bates, Esq.
Mr. Stephen Reid Moorhead, Esq.
Mr. Carl R. Pennington, Jr., Esq.
Mr. Emory O. Williams, Jr., Esq.
Mr. Albert C. Penson, Esq.

DISTRICT COURT OF APPEAL, FIRST DISTRICT
Tallahassee, Fl. 32399
Telephone (904) 488-6151
DATE September 12, 1991
CASE NO. 91-1185

JACK D. KELLY, etc. et al. appellant/petitioner	vs.	TREE FARM DEVELOPMENT CORP., et al. appellees/respondent

ORDER

Appellee's motion filed August 14, 1991, seeking to supplement the record on appeal, is denied.

By order of the court

JON S. WHEELER, CLERK

I HEREBY CERTIFY that a true and correct copy of the above was mailed this date to the following:

Jack D. Kelly
Philip A. Bates
Carl r. Pennington, Jr.
Emory O. Williams, Jr.
Albert C. Penson

Burton Strubhar
Stephen Reid Moorhead

/s/ Laurie Black
Deputy Clerk

[SEAL]

DISTRICT COURT OF APPEAL, FIRST DISTRICT
Tallahassee, Fl. 32399
Telephone (904) 488-6151
DATE September 10, 1991
CASE NO. 91-1908

LT 91-0309-CA-01

JACK D. KELLY	vs.	TREE FARM DEVELOPMENT CORP.
appellant/petitioner		appellees/respondent

ORDER

Appellee's motion filed July 25, 1991, is granted and this appeal is dismissed for lack of jurisdiction.

By order of the court

JON S. WHEELER, CLERK

I HEREBY CERTIFY that a true and correct copy of the above was mailed this date to the following:

Burton E. Strubhar
Ernie Lee Magaha

Philip A. Bates

[SEAL]

By: /s/ Laurie Black
Deputy Clerk

IN THE CIRCUIT COURT FOR THE
SECOND JUDICIAL CIRCUIT, IN
AND FOR LEON COUNTY, FLORIDA

DATE August 1, 1991

JACK D. KELLY, etc.,
Plaintiff,

CASE NO.: 90-3398

vs.

TREE FARM DEVELOPMENT CORP., et al.,
Defendants.
_____/

ORDER GRANTING MOTION TO WITHDRAW

THIS CAUSE having come to be heard on the motion of attorney, Albert C. Penson, to withdraw as counsel for JACK D. KELLY, individually and JACK D. KELLY as President/Shareholder of Maple Leaf Development Corp., and the Court having reviewed the motion and the file and having found that JACK D. KELLY, individually and JACK D. KELLY as President/Shareholder of Maple Leaf Development Corp., is presently represented by counsel and the court being otherwise advised in the premises, it is hereby

ORDERED AND ADJUDGED that the motion of Albert C. Penson, to withdraw is hereby granted.

DONE AND ORDERED this 1st day of August, 1991, nunc pro tunc, in Chambers at Tallahassee, Leon County, Florida.

/s/ J. Lewis Hall, Jr.
J. LEWIS HALL, JR.
Circuit Judge

Copies to:
Albert C. Penson, Esquire
Philip A. Bates, Esquire
Stephen R. Moorhead, Esquire
Carl R. Pennington, Jr., Esquire
Emory O. Williams, Jr., Esquire
Burton E. Strubhar, Esquire
Jack D. Kelly

DISTRICT COURT OF APPEAL, FIRST DISTRICT
Tallahassee, Fl. 32399
Telephone (904) 488-6151
DATE July 16, 1991

LT 90-3398

CASE NO. 91-1185

JACK D. KELLY, etc. et al. appellant/petitioner	vs.	TREE FARM DEVELOPMENT CORP., et al. appellees/respondent

ORDER

Appellee's motion for treatment as interlocutory appeal for briefing purposes, filed June 28, 1991, is granted.

By order of the court

JON S. WHEELER, CLERK

I HEREBY CERTIFY that a true and correct copy of the above was mailed this date to the following:

Jack D. Kelly
Philip A. Bates
Carl r. Pennington, Jr.
Emory O. Williams, Jr.
Albert C. Penson
Paul F. Hartsfield
Burton Strubhar
Stephen Reid Moorhead

/s/ Laurie Black
Deputy Clerk

[SEAL]

DISTRICT COURT OF APPEAL, FIRST DISTRICT
Tallahassee, Fl. 32399
Telephone (904) 488-6151
DATE May 20, 1991

CASE NO. 91-01185

L.T. CASE NO. 90-3398

JACK D. KELLY, etc. et al. appellant(s),	vs.	TREE FARM DEVELOPMENT CORP., et al. appellee(s).

ORDER

Appellant has failed to timely file a completed docketing statement as required by the Court.

Failure to file such completed docketing statement within ten (10) days from the date hereof will result in the imposition of appropriate sanctions by the Court.

By order of the court

JON S. WHEELER, CLERK

I HEREBY CERTIFY that a true and correct copy of the above was mailed this date to the following:

Jack D. Kelly
Philip A. Bates
Carl R. Pennington, Jr.
Albert C. Penson

Burton Strubhar
Stephen Reid Moorhead
Emory O. Williams, Jr.

[SEAL]

/s/ Laurie Black
Deputy Clerk

IN THE CIRCUIT COURT FOR THE SECOND JUDICIAL CIRCUIT IN AND FOR LEON COUNTY, FLORIDA

DATE March 12, 1991

JACK D. KELLY, individually and
JACK D. KELLY as President/
Shareholder of Maple Leaf
Development Corp.,
Plaintiff,

vs. CASE NO. 90-3398

TREE FARM DEVELOPMENT CORP.;
EMORY O. WILLIAMS, JR.; GEORGE
G. PHILLIPS, JR.; E. D. BOB
PIERCE; and the Estate of
ABRAHAM L. PIERCE,

Defendants.
_____/

ORDER ON MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION OR, IN THE ALTERNATIVE, TRANSFER

THIS CAUSE having come on before the Court upon the Motion of Tree Farm Development Corporation, and other, to dismiss for lack of subject matter jurisdiction and to abate or, in the alternative, transfer for improper venue; and the Court having reviewed the Motions and having heard the argument of counsel and being otherwise fully advised in the premises, finds and decides as follows:

1. This action involves a claim by the Plaintiff which in substance relates to the Plaintiff's claim to title of certain real property situate in Escambia County, Florida. since the action is, therefore, a "local action" it should have been filed in Escambia County, Florida.

2. Under the circumstances, the case should be transferred to Escambia County, Florida. It is, thereupon,

CONSIDERED, ORDERED AND ADJUDGED that this case shall be and the same is hereby transferred to Escambia County, Florida. The Clerk of this Court shall transfer the pleadings file, or a copy thereof, as may be appropriate, to the Clerk of the Circuit Court in and for Escambia County, Florida. The Plaintiff shall be responsible for any filing fees or other transfer costs which may be incurred or required by the Clerk of this Court, or the Clerk of the Circuit Court in and for Escambia County, Florida in connection with such transfer. The Motions to Dismiss the Plaintiff's complaint for failure to state a cause of action have not been heard or disposed of by this Court and the same remain pending. Accordingly, and under the applicable Rules of Civil Procedure, no Answer or other responsive pleading is yet due by those Defendants who have filed with motions to Dismiss for failure to state a cause of action.

DONE AND ORDERED in Chambers at Tallahassee, Leon County, Florida, this 12 day of March 1991.

/s/ J. Lewis Hall, Jr.
CIRCUIT JUDGE

Copies Furnished to:

Philip A. Bates
Stephen R. Moorhead
Carl R. Pennington, Jr.
Emory O. Williams, Jr.
Albert C. Penson

CR015.PAB

IN THE CIRCUIT COURT FOR THE SECOND JUDICIAL CIRCUIT IN AND FOR LEON COUNTY, FLORIDA

DATE March 12, 1991

JACK D. KELLY, individually and JACK D. KELLY as President/ Shareholder of Maple Leaf Development Corp.,
Plaintiff,
vs.
TREE FARM DEVELOPMENT CORP.; EMORY O. WILLIAMS, JR.; GEORGE G. PHILLIPS, JR.; E. D. BOB PIERCE; and the Estate of ABRAHAM L. PIERCE,
Defendants.
_____/

CASE NO. 90-3398

ORDER ON MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION OR, IN THE ALTERNATIVE, TRANSFER

THIS CAUSE having come on before the Court upon the Motion of Tree Farm Development Corporation, and others, to dismiss for lack of subject matter jurisdiction and to abate or, in the alternative, transfer for improper venue; and the Court having reviewed the Motions and having heard the argument of counsel and being otherwise fully advised in the premises, finds and decides as follows:

1. This actions involves a claim by the Plaintiff which in substance relates tot the Plaintiff's claim to title of certain real property situate in Escambia County, Florida. since the action is, there fore, a "local action" it should have been filed in Escambia County, Florida.

2. Under the circumstances, the case should be transferred to Escambia County, Florida. It is, thereupon,

CONSIDERED, ORDERED AND ADJUDGED that this case

shall be and the same is hereby transferred to Escambia County, Florida. The Clerk of this Court shall transfer the pleadings file, or a copy thereof, as may be appropriate, to the Clerk of the Circuit court in and for Escambia County, Florida. The Plaintiff shall be responsible for any filing fees or other transfer costs which may be incurred or required by the Clerk of this court, or the Clerk of the Circuit court in and for Escambia County, Florida, in connection with such transfer. The Motions to Dismiss the Plaintiff's Complaint for failure to state a cause of action have not been heard or disposed of by this court and the same remain pending. Accordingly, and under the applicable Rules of Civil Procedure, no Answer or other responsive pleading is yet due by those Defendants who have filed said Motions to Dismiss for failure to state a cause of action.

DONE AND ORDERED in Chambers at Tallahassee, Leon County, Florida this 12 day of March 1991.

/s/ J. Lewis Hall, Jr.
CIRCUIT JUDGE

Copies furnished to:
Philip A. Bates
Stephen R. Moorhead
Carl R. Pennington, Jr.
Emory O. Williams, Jr.
Albert C. Penson

SUPREME COURT OF FLORIDA

DATE March 10, 1991

JACK D. KELLY, etc.	*	
Appellant,	*	CASE NO.
	*	79,254
v.	*	
TREE FARM	*	District Court
DEVELOPMENT	*	of Appeal,
CORPORATION, et al.,	*	1st District -
Appellees.	*	No. 91-1185
**********	*	

Appellant's Motion to Reinstate Appeal filed in the above cause is hereby denied.

OVERTON, McDONALD, BARKETT, KOGAN and HARDING, JJ., concur

A True Copy

TEST:

Sid J. White
Clerk, Supreme Court

[SEAL]

TC

cc. Hon. Jon S. Wheeler, Clerk
Hon. Paul Hartsfield, Clerk
Hon. J. Lewis Hall, Jr., Judge

Burton E. Strubhar, Esquire
Philip A. Bates, Esquire
Stephen R. Moorhead [sic], Esquire
Carl R. Pennington, Esquire
Emory O. Williams, Esquire
Albert C. Penson, Esquire

IN THE CIRCUIT COURT IN AND FOR
ESCAMBIA COUNTY, FLORIDA
DATE October 17, 1990

PENSACOLA LOAN & SAVINGS BANK,
a Florida industrial savings bank,
Plaintiff,

vs.

CASE NO. 79-1862-CA-01
DIVISION "B"

EMORY O. WILLIAMS and GLORIA V. WILLIAMS, Husband and Wife, ABE PIERCE and VERA PIERCE, Husband and Wife, E. D. PIERCE, and GEORGE G. PHILLIPS,
Defendants,

vs.

TREE FARM DEVELOPMENT CORPORATION,
Garnishee.

_____/

NOTICE OF GARNISHMENT

To: Emory O. Williams, Jr.
Admiralty Building
Suite 306
4440 PGA Boulevard
Palm Gardens, FL 33410

Gloria V. Williams
Admiralty Building
Suite 306
4440 PGA Boulevard
Palm Gardens, FL 33410

E. D. Pierce
1401 North "B" Street
Pensacola, FL 32501

George G. Phillips
815-B Foxsprings Road
Chesterfield, MO 63017

Tree Farm Development
Corporation
c/o Philip A. Bates, Esquire
700 South Palafox, Suite 3-A
Pensacola, FL 32501

You are notified that a Writ of Garnishment has been served on the above-named Garnishee, and the Garnishee has filed its Answer, a copy of which is attached.

Stephen R. Moorhead, as Personal Representative for the Estate of Abe Pierce, certifies that copies of the Notice of Writ of Garnishment and Garnishee's Answer have been served by certified mail on Defendants: Emory O. Williams, Jr., Admiralty Building, Suite 306, 4440 P G A Boulevard, Palm Beach Gardens, FL 33410; Gloria V. Williams, Jr., Admiralty Building, Suite 306, 4440 P G A Boulevard, Palm Beach Gardens, FL 33410; E. D. Pierce, 1401 N. "B" Street, Pensacola, FL 3250; George G. Phillips, 815-B Foxsprings Road, Chesterfield, Missouri 63017; and Garnishee: Tree Farm Development Corporation, c/o Philip A. Bates, Esquire, 700 South Palafox, Suite 3-A, Pensacola, Florida 32501 who has or appears to have an ownership interest in the deposit, account or other personal property in possession or control of Garnishee at his or their address as shown by the Answer of garnishee.

DATED this the 17th day of October, 1990.

/s/ Stephen R. Moorhead
Stephen R. Moorhead
Florida Bar #613339
McDONALD, FLEMING & MOORHEAD
700 South Palafox Street
Suite 3-C
Pensacola, Florida 32501
(904) 435-9930
Attorneys for Defendant

IN THE CIRCUIT COURT IN AND FOR
ESCAMBIA COUNTY, FLORIDA
DATE October 17, 1990

PENSACOLA LOAN & SAVINGS BANK,
a Florida industrial savings bank,
Plaintiff,

vs.

CASE NO. 79-1862-CA-01
DIVISION "B"

EMORY O. WILLIAMS and GLORIA V. WILLIAMS, Husband and Wife, ABE PIERCE and VERA PIERCE, Husband and Wife, E. D. PIERCE, and GEORGE G. PHILLIPS,
Defendants,

vs.

TREE FARM DEVELOPMENT CORPORATION,
Garnishee.
_____/

REPLY

COMES NOW, Stephen R. Moorhead, as Personal Representative of the Estate of Abe Pierce, deceased, pursuant to Section 77.061, Florida Statutes (1989), and makes its reply to the Answer of Garnishee, Tree Farm Development Corporation and says:

1. Your Movant, Stephen R. Moorhead, as Personal Representative of the Estate of Abe Pierce, deceased, generally denies each and all of the allegations contained in paragraphs one through five of Garnishee's, Tree Farm Development Corporation, answer.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Reply has been forwarded to Emory O. Williams, Jr., Admiralty Building, Suite 306, 4440 P G A Boulevard, Palm Beach Gardens, FL

33410, Gloria V. Williams, Jr., Admiralty Building, Suite 306, 4440 P G A Boulevard, Palm Beach Gardens, FL 33410, E. D. Pierce, 1401 N. "B" Street, Pensacola, FL 32501 and George G. Phillips, 815-B Foxsprings Road, Chesterfield, Missouri 63017 the 17th day of October, 1990.

/s/ Stephen R. Moorhead
Stephen R. Moorhead
Florida Bar #613339
McDONALD, FLEMING & MOORHEAD
700 South Palafox Street
Suite 3-C
Pensacola, Florida 32501
(904) 435-9930
Attorneys for Defendant

IN THE CIRCUIT COURT IN AND FOR
ESCAMBIA COUNTY, FLORIDA
DATE October 4, 1990

PENSACOLA LOAN & SAVINGS BANK,
a Florida industrial savings bank,
Plaintiff,

vs.

CASE NO. 79-1862-CA-01
DIVISION "B"

EMORY O. WILLIAMS and GLORIA V. WILLIAMS, Husband and Wife, ABE PIERCE and VERA PIERCE, Husband and Wife, E. D. PIERCE, and GEORGE G. PHILLIPS,
Defendants,

vs.

TREE FARM DEVELOPMENT CORPORATION,
Garnishee.
_____/

ANSWER TO WRIT OF GARNISHMENT

COMES NOW the Garnishee, Tree Farm Development Corporation, by and through its undersigned attorneys, and for its answer to the writ of garnishment served upon it in connection with this case in answer to the separately numbered paragraphs thereof, would say as follows:

1. Tree Farm Development corporation is not now currently indebted to the Defendants, Emory O. Williams, Gloria V. Williams, E. D. Pierce, or George G. Phillips. Any obligations which may now exist are contingent, unliquidated and/or disputed. There is no debt currently due.

2. To the best knowledge, information and belief of the Garnishee, there is no tangible or intangible personal property of any of the Defendants in the possession of Tree Farm Development Corporation.

3. While the Garnishee, Tree Farm Development Corporation,

is not in possession of any property of the Defendants, Edward L. Diehl, Robert L. Smith and Bob Pierce, as Trustees, may be in possession of certain shares of stock in Tree Farm Development Corporation, held or arguably claimed by one or more of the Defendants.

4. The undersigned Garnishee is not liable to the Plaintiff in this proceeding on the Writ of Garnishment. Any and all factual allegations of the writ of Garnishment not specifically admitted herein are denied.

5. Tree Farm Development Corporation has retained its undersigned counsel to represent it in connection with this proceeding and has become obligated to pay its attorneys a reasonable fee for services.

/s/ Philip A. Bates
PHILIP A. BATES
BATES & TIPTON, P.A.
700 South Palafox, Ste. 3-A
Pensacola, FL 32501
(904) 469-0202
Attorney for Tree Farm
Development Corporation

Florida Bar No.: 228354

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Answer to Writ of Garnishment has been furnished to Stephen R. Moorhead, 700 South Palafox, Suite 3-C, Pensacola, FL 32501, by hand delivery, this the 4th day of October, 1990.

/s/ Philip A. Bates
Philip A. Bates

IN THE CIRCUIT COURT IN AND FOR
ESCAMBIA COUNTY, FLORIDA
DATE August 22, 1990

PENSACOLA LOAN & SAVINGS BANK,
a Florida industrial savings bank,
Plaintiff,

vs.

CASE NO. 79-1862-CA-01
DIVISION "B"

EMORY O. WILLIAMS and GLORIA V. WILLIAMS, Husband and Wife, ABE PIERCE and VERA PIERCE, Husband and Wife, E. D. PIERCE, and GEORGE G. PHILLIPS,
Defendants,

vs.

TREE FARM DEVELOPMENT CORPORATION,
Garnishee.

WRIT OF GARNISHMENT

THE STATE OF DELAWARE

TO ALL AND SINGULAR THE SHERIFFS OF THE STATE;

YOU ARE COMMANDED to summon the Garnishee to answer this Writ or to serve a copy of this Writ and Summons on the Garnishee.

NOTICE TREE FARM DEVELOPMENT CORPORATION as Garnishee, whose address is c/o The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

You are notified that Defendants, EMORY O. WILLIAMS, GLORIA V. WILLIAMS, E. D. PIERCE, and GEORGE G. PHILLIPS are indebted to The Estate of Abe Pierce, Deceased on an unsatisfied Judgment in the amount of $17,308.70 plus interest and costs.

No later than 20 days after receipt of this Writ, you are required to file in writing an answer to it, whether at the time of service of this Writ, at the time of filing your answer, or at any time between such times:

1. You are or were indebted to Defendants, EMORY O. WILLIAMS, GLORIA V. WILLIAMS, E. D. PIERCE, and GEORGE G. PHILLIPS and if so, in what amount.

2. What tangible or intangible personal property of Defendant is or was in your possession or control.

3. Whether you know of any other person indebted to Defendant or who may have possession or control of property of Defendants, EMORY O. WILLIAMS, GLORIA V. WILLIAMS, E. D. PIERCE, and GEORGE G. PHILLIPS.

You must serve by mail a copy of your answer on the Personal Representative for the Estate of Abe Pierce, Deceased, STEPHEN R. MOORHEAD, ESQUIRE, Whose address is 700 South Palafox Street, Suite 3-C, Pensacola, Florida 32501.

After receipt of this Writ you may be liable to The Estate of Abe Pierce; Deceased, up to the amount of the unsatisfied Judgment, for any debt from you to defendants, and for any of Defendants' personal property in your possession or control. Further, you are required to retain any such debt due Defendant and to retain the personal property of Defendants pending further Court order.

FAILURE TO ANSWER THIS WRIT OR TO RETAIN THE DEBT OR PERSONAL PROPERTY MAY MAKE YOU LIABLE TO THE EXTENT OF THE UNSATISFIED JUDGMENT.

One Hundred Dollars ($100.00) have been deposited into the escrow account of the Court to assist in obtaining the service of any attorney in answering this Writ.

WITNESS my hand and seal of this Court on this 22 day of August, 1990.

ERNIE LEE MAGAHA
Clerk of the Court

By: /s/ Grace Edwards
Deputy Clerk

IN THE CIRCUIT COURT IN AND FOR
ESCAMBIA COUNTY, FLORIDA
DATE August 21, 1990

PENSACOLA LOAN & SAVINGS BANK,
a Florida industrial savings bank,
Plaintiff,

vs.

CASE NO. 79-1862-CA-01
DIVISION "B"

EMORY O. WILLIAMS and GLORIA V. WILLIAMS, Husband and Wife, ABE PIERCE and VERA PIERCE, Husband and Wife, E. D. PIERCE, and GEORGE G. PHILLIPS,
Defendants,

vs.

TREE FARM DEVELOPMENT CORPORATIGN,
Garnishee.
_____/

ORDER FOR ISSUANCE OF WRIT OF GARNISHMENT

The Estate of Abe Pierce, Deceased, by and through its personal representative, has applied for a Writ of Garnishment. After consideration of the documents received, it appears that the application should be granted. It is therefore

ORDERED AND ADJUDGED that a Writ of Garnishment be issued.

DONE AND ORDERED in Chambers, Escambia County, Florida, this 21st day of August, 1990.

/S/ John P. Kuder
CIRCUIT JUDGE

Conformed copies to:
Stephen R. Moorhead, Esquire

IN THE CIRCUIT COURT IN AND FOR
ESCAMBIA COUNTY, FLORIDA
DATE July 16, 1979

PENSACOLA LOAN & SAVINGS BANK,
a Florida industrial savings bank,
Plaintiff,

vs.

CASE NO. 79-1862-CA-01
DIVISION "E"

EMORY O. WILLIAMS and GLORIA V. WILLIAMS, Husband and Wife, ABE PIERCE and VERA PIERCE, Husband and Wife, E. D. PIERCE, and GEORGE G. PHILLIPS,
Defendants.

_____/

FINAL JUDGMENT

THIS CAUSE having come on to be heard by this Court and the Court having heard argument of counsel for the parties and having considered the testimony of the Plaintiff's witness, the Plaintiff's Affidavits and Exhibit, and having reviewed the Court file, and being otherwise fully advised in the premises, now, therefore, it is

ORDERED AND ADJUDGED:

That the Plaintiff, Pensacola Loan & Savings Bank, a Florida industrial savings bank, recover from the Defendants, Emory O. Williams and Gloria V. Williams, husband and wife, Abe Pierce and Vera Pierce, husband and wife, E.D. Pierce, and George G. Phillips, jointly and severally, the sum of $16,450.70 as principal and interest on the note sued upon herein, attorney's fees in the sum of $750.00 and costs in the sum of $108.00 making a total amount of $17,308.70, for which let execution issue.

DONE AND ORDERED in Chambers at Pensacola, Escambia County, Florida, this 16th day of July, 1979.

/S/ M C Blanchard
CIRCUIT JUDGE

Copies Furnished to:
C. Miner Farrell, Esquire
George G. Phillips, Esquire